

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) Case No. 8:20CR104
)
Plaintiff,)
)
vs.)
)
JONATHAN DANIEL ROONEY,)
) Omaha, Nebraska
Defendant.) December 15 and 18, 2020

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL D. NELSON
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by electronic sound recording, transcript
produced with computer.

1 (At 9:33 a.m. on December 15, 2020; with counsel and the
2 defendant present:)

3 THE COURT: ...of America versus Jonathan Rooney.
4 The case number is 8:20CR104.

5 Counsel for the government, please enter your appearance.

6 MS. WRIGHT: Good morning, Your Honor. Seated here
7 at the government's table, Lecia Wright for the United States
8 along with Sean Lynch. Behind us is FBI Special Agent Sam
9 Roberts.

10 THE COURT: Good morning to each of you.
11 For the defendant.

12 MS. STEENBOCK: Good morning, Judge. Kelly
13 Steenbock, Assistant Public Defender, on behalf of Mr. Rooney,
14 who's seated at counsel table with me this morning.

15 THE COURT: Good morning to each of you.
16 Mr. Rooney, are you feeling all right?

17 MS. STEENBOCK: You gotta answer.

18 THE DEFENDANT: Yeah.

19 THE COURT: Okay. We're here today, sir, because
20 your attorney has filed a motion to suppress. That motion was
21 at filing number 41. The aim of the motion is to contest the
22 admission of statements that you made while in custody. The
23 motion's supported by a brief at filing number 42. It's
24 opposed by the government at filing number 45, and the
25 defendant filed a reply brief at the Court's direction at

1 filing number 48. We're here for the evidentiary hearing.

2 As I understand it, Ms. Wright, you don't intend to put on
3 all your evidence today because of witness availability?

4 MS. WRIGHT: Yes, Your Honor, that's correct. One of
5 the government's witnesses, Officer Walker, is in quarantine in
6 Winnebago until tomorrow and is able to travel to court on
7 Friday, and so the intent is to proceed with Agent Roberts this
8 morning and then conclude on Friday.

9 THE COURT: Okay. So you're going to have two
10 witnesses total?

11 MS. WRIGHT: Yes, Your Honor.

12 THE COURT: And Ms. Steenbock, you don't have to make
13 this decision final now, but do you intend to be putting on any
14 evidence?

15 MS. STEENBOCK: I -- I have no intention to unless
16 something unexpected occurs.

17 THE COURT: Okay. As far as exhibits, I'm assuming
18 that the government has some exhibits?

19 MS. WRIGHT: I do, Your Honor. I have a disk that
20 has three separate interviews on them, and that disk Your Honor
21 has already received, and I think you'd noticed that it's
22 labeled inside of the disk. It's Exhibit 1, 2 and 3.

23 THE COURT: Okay. I will say that the disk I got had
24 two interviews. They are the Roberts interviews. It did not
25 have the Walker interview.

1 MS. WRIGHT: Okay.

2 THE COURT: So I -- because you had provided it to
3 defense counsel and I anticipated defense was not going to have
4 an objection to me listening to that, I did listen to those two
5 interviews --

6 MS. WRIGHT: Okay.

7 THE COURT: -- more than -- more than once, but I
8 haven't heard the Walker interview yet. So the disk is
9 Exhibits 1, 2 and 3, three different interviews.

10 MS. WRIGHT: Yes, that's correct, Your Honor. I
11 apologize that the Walker one was not on the copy you received.
12 It should have been. It is on the copy I have here in court.
13 My intent was to wait and offer it on Friday.

14 THE COURT: Okay.

15 MS. WRIGHT: But if -- if Ms. Steenbock doesn't have
16 an objection, I might offer it today if there are no foundation
17 issues, and that way Your Honor has an opportunity to listen to
18 it prior to Officer Walker's testimony on Friday.

19 THE COURT: And then do you have one paper --

20 MS. WRIGHT: And that's --

21 THE COURT: -- exhibit?

22 MS. WRIGHT: Correct, Your Honor. So Government
23 Exhibit 4 would be the FD-395.

24 THE COURT: Okay. The rights advisory?

25 MS. WRIGHT: Yes, Your Honor.

1 THE COURT: What I typically do, Ms. Steenbock, is
2 have the government offer those exhibits if there's not going
3 to be an objection now and just receive them so that they're
4 available as testimony comes in.

5 The government is offering Exhibits 1 through 4?

6 MS. WRIGHT: Yes, Your Honor.

7 THE COURT: Would there be an objection?

8 MS. STEENBOCK: No objection, Judge.

9 THE COURT: Okay. I'll go ahead and receive them.

10 And then as far as opening statements, I don't think it's
11 necessary. The parties have done an excellent job with their
12 briefing. I did have some clarifications that I did want to
13 ask you first, Ms. Wright. And if you want to make an
14 argument, you certainly can, as Ms. Steenbock will be allowed
15 to. Certainly when we get done on Friday, we'll allow you to
16 make closing arguments.

17 With regard to statements, as I understand it, there were
18 essentially four encounters that resulted in statements from
19 the defendant. The first one was with Officer Walker, but
20 that's not recorded.

21 Is that correct?

22 MS. WRIGHT: Correct.

23 THE COURT: And then there were -- there was the
24 initial one with Agent Roberts that Officer Walker may have
25 been present but didn't do the interview?

1 MS. WRIGHT: Officer Walker was not present during
2 that interview. It was only Agent Roberts.

3 THE COURT: Okay. That one's recorded?

4 MS. WRIGHT: Yes.

5 THE COURT: And that's about 3:30 in the morning or
6 something like that?

7 MS. WRIGHT: Approximately three -- 3:23.

8 THE COURT: Okay. And what date is this?

9 MS. WRIGHT: May 17th.

10 THE COURT: Okay. And then the second interview is
11 again with Agent Roberts, and that's a couple hours later?

12 MS. WRIGHT: At 5:35, yes, Your Honor.

13 THE COURT: Okay. And that one's recorded?

14 MS. WRIGHT: Yes.

15 THE COURT: So those are Exhibits 1 and 2.

16 MS. WRIGHT: Yes, Your Honor.

17 THE COURT: And then later there is this interview
18 with Officer Walker later.

19 MS. WRIGHT: That's correct.

20 THE COURT: What time was that?

21 MS. WRIGHT: 6:18.

22 THE COURT: All on the same day?

23 MS. WRIGHT: Yes.

24 THE COURT: Now, as I understand it, the government
25 is not offering any statements that were made by the defendant

1 with regard to the first Officer Walker interview.

2 Is that correct?

3 MS. WRIGHT: Correct, Your Honor.

4 THE COURT: The one that's not recorded.

5 MS. WRIGHT: Correct.

6 THE COURT: And the -- the fourth interview, so to
7 speak, the last one with Officer Walker, the government is not
8 going to be offering any statements that were made by the
9 defendant in its case in chief but wishes to be able to use
10 those statements for impeachment in the event that Defendant
11 Rooney testifies at trial.

12 MS. WRIGHT: Yes, Your Honor. Correct.

13 THE COURT: With regard to the two interviews that
14 were done by Officer Roberts, the first one the government is
15 not intending to offer for any purpose?

16 MS. WRIGHT: Well, I suppose it would still be
17 available for impeachment as well -- I had not addressed that
18 in the brief, Your Honor -- but not in its case in chief.

19 THE COURT: Okay. And then the third interview,
20 second one with Agent Roberts, the government intends to offer
21 any statements that are made by the defendant during that
22 interview?

23 MS. WRIGHT: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. WRIGHT: But when I say intends to, I don't want

1 to necessarily say that I'm -- I plan to in my case in chief,
2 but it's our position that it is admissible in our case in
3 chief.

4 THE COURT: Thank you. So that's -- that's
5 essentially where you're coming from in your briefs, and that
6 would be essentially your opening statement?

7 MS. WRIGHT: I would agree, Your Honor.

8 THE COURT: Okay. Ms. Steenbock, you take the
9 position that none of the statements are admissible for the
10 reasons that you stated in your brief, including impeachment?

11 MS. STEENBOCK: Yes, Your Honor, for different
12 reasons for each of them. And I guess at this point, given the
13 government's position this morning and in her briefing, I would
14 ask the Court to just enter an order before we even begin the
15 hearing finding that statements one, two and four are
16 inadmissible in the government's case in chief. That would, of
17 course, narrow our issues to statement number three's
18 admissibility and then statement number four's admissibility as
19 impeachment evidence should Mr. Rooney elect to testify.

20 THE COURT: Well, I think those issues are moot. The
21 government's indicated that they're not offering statements
22 one, two and four in their case in chief, and they reserve
23 the -- they wish to reserve the right to -- to utilize
24 statements made during interviews two and four for impeachment.
25 I think the record's clear on that.

1 MS. STEENBOCK: Well, whether or not if they think
2 it's moot based on their decision currently, I still think it's
3 a violation of his constitutional rights and there should be an
4 order stating that.

5 THE COURT: What's the position of the government on
6 that?

7 MS. WRIGHT: The -- our position is consistent with
8 what Your Honor just stated, that they -- the issue is -- is a
9 moot issue because we don't intend to offer that evidence.

10 THE COURT: Okay. Okay. Well, why don't we go
11 ahead, then, and have you call your first witness?

12 MS. WRIGHT: At this time, then, the government calls
13 Special Agent Samuel Roberts to the stand.

14 THE COURT: Special Agent Roberts, if you would
15 please come up to the stand.

16 You can go ahead and take a seat in the chair here, and
17 then we'll have you sworn in.

18 COURTROOM DEPUTY: Please state your full name for
19 the record and spell your last name.

20 THE WITNESS: Samuel Roberts. Samuel David Roberts,
21 R-O-B-E-R-T-S.

22 COURTROOM DEPUTY: Please stand and raise your right
23 hand.

24 SAMUEL ROBERTS, PLAINTIFF'S WITNESS, SWORN

25 THE COURT: You may proceed when you're ready.

1 MS. WRIGHT: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. WRIGHT:

4 Q. Agent Roberts, before we begin, I've noticed that you do
5 have a tendency to speak rather quickly, and although we don't
6 have a court reporter here, because we're all masked up, I
7 would ask that you, as much as you can, try to be aware and
8 talk a little slower for purposes of this hearing.

9 Will you please identify yourself for the record, your
10 name and how you are employed?

11 A. My name is Samuel Roberts. I'm a special agent with the
12 FBI.

13 Q. How long have you been in that position?

14 A. Almost two years.

15 Q. What sort of training did you have to become an FBI agent?

16 A. I went through the basic field training officer course at
17 Quantico, Virginia.

18 Q. Prior to working for the FBI, what did you do?

19 A. I was a federal air marshal.

20 Q. Where?

21 A. In Washington, D.C.

22 Q. And what sort of training did you have for that position?

23 A. Tactical training on the aircraft and firearms training.

24 Q. What are your current duties and responsibilities with the
25 FBI?

1 A. I work major crimes and violent crimes on the Native
2 American reservations in Nebraska.

3 Q. As a part of those duties and responsibilities, did you
4 become involved in the investigation of the discovery of human
5 remains at a cabin in a remote location on the Winnebago Indian
6 Reservation?

7 A. Yes, ma'am, I did.

8 Q. When was this?

9 A. May 17th.

10 Q. Of 2020?

11 A. Of 2020.

12 Q. How did you become involved?

13 A. I was the duty agent for Sioux City Resident Agency. I
14 received the call approximately 2:30 a.m. saying they'd found
15 human remains in a burn pit.

16 Q. The phone call that you received, was that from FBI, or
17 was that from someone else?

18 A. It was from Winnebago Police Department.

19 Q. All right. And other than being told there were human
20 remains, were you told anything else at that time?

21 A. Not to my recollection, ma'am.

22 Q. Were you told anything about a potential suspect or a
23 potential victim?

24 A. Yes, ma'am. I was told that it was a potential female
25 victim and they had a potential suspect in custody.

1 Q. Once you learned that information, what did you do?

2 A. I got dressed and left my house and headed to Winnebago.

3 Q. All right. And on the way to the Winnebago Police
4 Department, did you have any conversations or make any
5 notifications to anyone else about your starting this
6 investigation?

7 A. Not to my memory, ma'am.

8 Q. All right. What time did you arrive at the Winnebago
9 Police Department?

10 A. Approximately 3:08 a.m. on May 17th.

11 Q. What did you do when you arrived?

12 A. I went into the PD and made contact with Officer Walker.

13 Q. What did the two of you discuss, Officer Walker and you?

14 A. Basically the nature of what had happened, what he had
15 seen. He also informed that it was at a very remote location
16 on the reservation.

17 Q. At the time that you spoke with Officer Walker, do you
18 know if he had himself been to what we're de- -- what we're
19 calling the scene?

20 A. I believe he conveyed that to me, yes, ma'am.

21 Q. Okay. I want to make sure we're clear here. Officer
22 Walker, when you spoke with him when you first arrived at the
23 police department, do you know whether or not he had been to
24 the -- the scene, meaning the cabin?

25 A. Yes, ma'am. He had been up there and come back.

1 Q. That was your understanding?

2 A. That was my understanding.

3 Q. Okay. Do you know if there were any other officers who
4 had been to the scene or the location?

5 A. My understanding that there had been some conservation
6 officers that had been up there as well.

7 Q. And when did you learn of the conservation officers?

8 A. I believe that initial conversation that they had been out
9 there.

10 Q. Okay. Initial conversation with Officer Walker?

11 A. Yes, ma'am.

12 Q. And was that taking place inside of the Winnebago Police
13 Department?

14 A. Yes, ma'am, it would have been.

15 Q. When you arrived at the Winnebago Police Department, did
16 you see the defendant, Mr. Rooney?

17 A. Not initially I did not.

18 Q. All right. And after your initial discussion with Officer
19 Walker when you described finding out the nature of what was
20 going on, did you and Officer Walker discuss any sort of
21 strategy with respect to how you would approach the defendant?

22 A. No, ma'am, we did not.

23 Q. What did you do?

24 A. I did go out and interview the defendant.

25 Q. All right. Now, tell the judge a little bit about how it

1 came to be that you were speaking with Officer Walker and then
2 you left to interview the defendant.

3 A. Officer Walker advised me that it would take a significant
4 amount of time to get up to the cabin just due to its rural
5 nature, and so what my fear was -- in addition to this I asked
6 what they would be doing with him. They said they were likely
7 going to send him to Thurston County Corrections to be housed
8 there. I was concerned that in moving him and then --

9 MS. STEENBOCK: Objection, nonresponsive to the
10 question.

11 THE COURT: Overruled.

12 BY MS. WRIGHT:

13 Q. You can -- you can keep on going.

14 A. That -- that once in process there they would wash him
15 down or allow him to clean himself and also just could
16 potentially destroy any evidence. I also wanted to know if he
17 was intoxicated; so that initiated me to go out and interact
18 with him.

19 Q. All right. So at some point while you were talking with
20 Officer Walker, you did learn that Mr. Rooney was on property
21 at the Winnebago Police Department?

22 A. Yes, ma'am, I was.

23 Q. Okay. And so did Walker tell you that he was outside?

24 A. Yes, ma'am. He said he was in the back of a unit.

25 Q. Okay.

1 A. Or a regular police officer's unit.

2 Q. All right. And can you describe for the judge -- I don't
3 know if he's familiar with what the Winnebago Police Department
4 looks like, but the parking lot and the building itself.

5 A. It's a one-story building that's -- as you go into the
6 fire department, and it has no jail in it whatsoever. It has a
7 bathroom, a break room, storage room, and then, like, a
8 dispatch room, and that's about it, and the parking lot is
9 where they park all their units and keep all their personal
10 vehicles as well.

11 Q. Is the parking lot behind the building or in front of the
12 building?

13 A. It's directly in front of the building.

14 Q. All right. When you arrived, did you park in that parking
15 lot?

16 A. Yes, ma'am, I did.

17 Q. Okay. And so although you didn't know when you arrived,
18 the defendant was in a vehicle in the front of the building?

19 A. Yes, ma'am. The officers parked directly in front of the
20 main entrance. I parked over on the fire department side as to
21 not impede their movement; so I would not have crossed directly
22 in the vehicle where I could have seen inside any of their
23 vehicles.

24 Q. Okay. But then you did learn that he was out there and --

25 A. Yes, ma'am.

1 Q. What was the plan as you left the Winnebago Police
2 Department?

3 A. After speaking with Mr. Rooney? It was to go to the
4 crime --

5 Q. No. Sorry. After speaking with Officer Walker, when you
6 exited the building, what was -- where were you going?

7 A. To speak to Rooney.

8 Q. Okay. And were you also going to go to the -- what we're
9 describing as the scene?

10 A. Yes, ma'am.

11 Q. All right. What time did you leave the building to speak
12 with the defendant?

13 A. Approximately 3:23 a.m.

14 Q. And was Officer Walker with you when you spoke with the
15 defendant?

16 A. No, ma'am.

17 Q. Prior to speaking with Mr. Rooney, did you advise him of
18 his Miranda rights?

19 A. No, ma'am.

20 Q. Were you aware at the time that you were speaking with him
21 that he was in custody?

22 A. Yes, ma'am, I was.

23 Q. Can you describe for the judge what you were wearing when
24 you went to speak with him?

25 A. I believe I was wearing khaki pants, a pullover -- or a

1 polo shirt, a blue jacket, and my typical agent gear, my
2 firearm and badge on my belt.

3 Q. All right. Do you know if your firearm and your badge
4 were visible to the defendant?

5 A. I do not know.

6 Q. When you approached the defendant, did you have to be let
7 into the vehicle?

8 A. No, ma'am. I believe the door was opened for me.

9 Q. Okay. Was it unlocked?

10 A. I do not know. I believe -- if I'm not mistaken, I
11 believe Officer Walker opened the door --

12 Q. Okay.

13 A. -- for me.

14 Q. And then did you get into the vehicle with the defendant?

15 A. No, ma'am, I did not.

16 Q. Can you describe for the judge, then, how you approached
17 the defendant?

18 A. I stood at the open door speaking to him through the cabin
19 of the vehicle.

20 Q. All right. And what kind of vehicle was this?

21 A. An SUV.

22 Q. Did you record your conversation with the defendant?

23 A. Yes, ma'am, I did.

24 Q. Prior to initiating your recording, did you have any
25 conversation with him?

1 A. No, ma'am.

2 Q. And did you eventually listen to that recording?

3 A. Yes, ma'am.

4 Q. When was the first time that you listened to that
5 recording?

6 A. October 8th, 2020.

7 Q. And the date that you spoke with him was on May 17th?

8 A. Correct.

9 Q. How did you -- what was the explanation for the delay in
10 you listening to that recording?

11 A. I had received a new recorder, and I had recorded this on
12 my old recorder and had mislabeled it as a transportation
13 recording, and so when I went through it, I did not see it. I
14 assumed I had not recorded the recording. When going through
15 my old recorder, I did discover it.

16 Q. Okay. And when you discovered it, what did you do with
17 it?

18 A. I immediately called you.

19 Q. Okay. And you --

20 A. USA attorney.

21 Q. -- provided that to me --

22 A. Yes, ma'am.

23 Q. -- on the same day that you discovered it?

24 A. Yes, ma'am.

25 Q. Okay. And have you yourself gone back and listened to

1 that interview?

2 A. Yes, ma'am.

3 Q. Was it -- the recording a true and accurate -- did it
4 capture a true and accurate recitation of your conversation
5 with the defendant?

6 A. Yes, ma'am, it did.

7 Q. And I've already asked you this, but you did not advise
8 him of his Miranda rights; correct?

9 A. No, ma'am, I did not.

10 Q. Why did you not advise him of his rights when you knew
11 that he was in custody?

12 A. It was not my intention to do any type of interrogation or
13 detailed conversation. I mainly wanted to check if he had any
14 physical evidence on him and if he was intoxicated or not.

15 Q. Okay. And when you spoke to him, were you attempting at
16 that time to -- to find out what happened?

17 A. And just generally, yes, ma'am, what -- what had occurred.

18 Q. Okay. And so you did in fact ask him some questions that
19 were eliciting an incriminating response?

20 A. Yes, ma'am.

21 Q. But if -- if I'm understanding, you weren't intending to
22 interrogate him?

23 A. No, ma'am, no.

24 Q. Would you say it's fair to summarize that although it
25 wasn't your intent, you did in fact cross that line into

1 interrogation?

2 A. Yes, ma'am, you could say that.

3 Q. Okay. And why was it that it wasn't your intent to
4 interrogate him?

5 A. I -- I was skeptical of what had happened as well, and
6 before I began any type of investigative procedures, I wanted
7 to verify the crime scene and that it was in fact human remains
8 in the burn pit.

9 Q. Okay. And what about him being in custody? Did that play
10 into your consideration at all?

11 A. Yes, ma'am. I was cognizant that he was in custody, and
12 as well as that I had not Mirandized him is why I spoke to my
13 questions as I did.

14 Q. Now, how long did you speak with him?

15 A. Approximately six and a half minutes.

16 Q. Do you recall what the tone of your conversation was when
17 you spoke with him?

18 A. It was conversational. At no time did we raise our
19 voices.

20 Q. And was he also conversational with you?

21 A. Yes, ma'am.

22 Q. And he did speak with you?

23 A. Yes, ma'am.

24 Q. During your conversation did you remain outside of the
25 vehicle the entire time?

1 A. The entire time.

2 Q. And do you recall where Officer Walker was during that
3 conversation?

4 A. He separated after opening the door, and I did not see him
5 for the remainder of the interview.

6 Q. Was there anybody else around, any other law enforcement
7 officers?

8 A. Not to my knowledge.

9 Q. And while you were speaking with the defendant, what was
10 he wearing?

11 A. He was wearing a blanket across his lap, and that's all I
12 could observe.

13 Q. Were you able to see his -- if he had a blanket, was there
14 anything else on him?

15 A. He had restraints around his wrists.

16 Q. All right. And did he have a shirt on?

17 A. No, ma'am.

18 Q. Did you observe anything on his physical appearance as you
19 were speaking with him?

20 A. I noticed some minor blemishes, but that's about it.

21 Q. All right. And this was at 3:23 in the morning,
22 approximately. Was it dark outside?

23 A. Yes, ma'am, it was.

24 Q. Was it light inside of the vehicle?

25 A. No, ma'am.

1 Q. Did -- was there, like, a dome light that lit up inside of
2 the vehicle?

3 A. I -- I do not recall if there was.

4 Q. All right. And what about the parking lot? Did that have
5 lights?

6 A. The parking lot is lit --

7 Q. Okay.

8 A. -- from the main building's floodlights.

9 Q. So you were able to -- to see him enough that you could
10 see his face; correct?

11 A. Correct.

12 Q. And to make out some markings on his body?

13 A. Correct.

14 Q. Okay. Now, I've asked you about whether prior to speaking
15 with Mr. Rooney that initial time if you and Officer Walker had
16 discussed any sort of strategy, but I want to know what about,
17 like, independently in your own mind. Did you develop some
18 sort of strategy in how you were going to approach Mr. Rooney?

19 A. At this initial --

20 Q. Correct.

21 A. Not really. I'd ran out there, as I -- I said, to assess
22 his -- whether he was intoxicated and whether he had any
23 physical evidence on him, and I was cognizant he -- I had not
24 Mirandized him and he was in the back of a police unit, and so
25 I remember thinking, Don't -- don't get too in the weeds with

1 this conversation.

2 Q. All right. Now, what did you do after you spoke with --
3 well, let me ask this first. The recording is about six and a
4 half minutes, and it stops. Did you have any conversation with
5 Mr. Rooney after turning off the recorder?

6 A. No, ma'am.

7 Q. What did you do after you finished your conversation with
8 him?

9 A. Myself, Officer Walker and conservation officers and some
10 individuals with the fire department went up to the cabin.

11 Q. All right. At the cabin what did you observe?

12 A. I observed human remains in a smoldering fire pit and also
13 a significant amount of blood found in the cabin.

14 Q. All right. And at some point did you return to the
15 Winnebago Police Department?

16 A. Yes, ma'am, I did.

17 Q. Prior to your return or on your way back to the Winnebago
18 Police Department, did you at any point have a discussion with
19 any of the officers about having another conversation with
20 Mr. Rooney?

21 A. No, ma'am.

22 Q. All right. And what about in your own mind, did you at
23 any point develop a strategy after viewing the scene with
24 respect to how you would discuss anything further with
25 Mr. Rooney?

1 A. I believe that at that time he was likely a suspect in
2 what had happened, and I had decided that I should probably
3 have a more in-depth interview with him concerning the events
4 at the cabin.

5 Q. All right. Now, then, when you returned to the Winnebago
6 Police Department, what time was it?

7 A. Approximately 5:23 a.m.

8 Q. And was Mr. Rooney still there?

9 A. Yes, ma'am.

10 Q. When you got back, did you go into the police department
11 first, or did you make contact with Mr. Rooney?

12 A. I went in the police department first.

13 Q. What did you do inside the police department?

14 A. Had a brief discussion about what we had found up on BIA
15 50, the cabin, and then I told him I was going to go interview
16 Mr. Rooney.

17 Q. And who were you speaking with?

18 A. Officer Walker.

19 Q. Were any other officers present?

20 A. I believe dispatch was there, but I don't believe I
21 engaged them. I solely spoke to Officer Walker.

22 Q. And was Mr. Rooney still in the vehicle, the same vehicle
23 as before?

24 A. Yes, ma'am.

25 Q. And so can you tell the judge about how you re-engaged

1 with him at that point?

2 A. I returned to the vehicle and Mirandized him and then
3 began conversation with him again.

4 Q. When you went to the vehicle, do you recall on this second
5 interview that it happened a- -- was it at approximately 5:35?

6 A. That is correct.

7 Q. Did you open the door yourself, or did somebody let you
8 in?

9 A. I believe I opened the door, to the best of my memory.

10 Q. Okay. And this conversation was also recorded; correct?

11 A. Yes, ma'am.

12 Q. And so if on that recording you can be heard -- your voice
13 can be heard at the very beginning saying, "Do you mind if I
14 talk to him real quick," who would you have been talking to?

15 A. It was likely there was an officer standing out there
16 because there was an individual in the vehicle, just watching
17 the vehicle, and so it would have been someone just statically
18 standing off to the vehicle.

19 Q. Okay. You said "likely." Do you have a recollection of
20 there being someone there?

21 A. I remember there being someone out there, but I don't
22 remember which officer it was.

23 Q. Okay. Do you know who Officer Marcus Trudell is?

24 A. I'm familiar with him, yes, ma'am.

25 Q. Do you know if it was him?

1 A. It very likely could have been. I knew he was out there
2 that evening.

3 Q. Okay. But you can't say for sure?

4 A. No, ma'am, I can't say for sure.

5 Q. Okay. And then you believe you opened the door and then
6 started speaking with him?

7 A. Yes, ma'am.

8 Q. Did you advise him of his rights at that time?

9 A. Yes, ma'am, I did.

10 Q. And at that time why did you advise him of his rights?

11 A. Because I was aware that he was in custody and I was going
12 to be asking interrogative questions.

13 Q. Did he waive his rights?

14 A. Yes, ma'am, he did.

15 Q. And is there some sort of way that the FBI typically
16 advises a -- a suspect of their rights?

17 A. Yes, ma'am. We read a FD-395 form, and we have them read
18 us it and sign and date it. Or I date it and he signs it.

19 Q. And is that what you did in this case?

20 A. Yes, ma'am.

21 Q. And all of that was captured on a recording as well?

22 A. Yes, ma'am.

23 Q. Okay. So Mr. Rooney did in fact talk to you at that
24 time --

25 A. Yes, ma'am.

1 Q. -- correct?

2 Okay. How long did he speak with you for?

3 A. Approximately 33 minutes.

4 THE COURT: Excuse me. I'm sorry. How long? I
5 didn't hear your answer.

6 THE WITNESS: Oh, I'm sorry. Approximately 33
7 minutes, Your Honor.

8 THE COURT: Thank you.

9 BY MS. WRIGHT:

10 Q. And how did that conversation come to an end?

11 A. He asked me to speak to a lawyer.

12 Q. And once he asked you that, what did you do?

13 A. Terminated the interview.

14 Q. The conversation you just described as being 33 minutes,
15 that was recorded, and --

16 A. Yes, ma'am.

17 Q. -- the judge has received that as an exhibit and has also
18 listened to it. Were there any conversations, though, with the
19 defendant that were not captured on that recording?

20 A. No, ma'am.

21 Q. Okay. So either prior to initiating the recording device
22 or after shutting it off, you didn't have any other
23 conversations with him?

24 A. No, ma'am.

25 Q. Okay. And I'll ask you kind of the same question with

1 respect to your firearm and your -- and where you were located
2 during this 33-minute conversation. When you approached the
3 defendant and you opened the door, did you get in the vehicle
4 at that point?

5 A. No, ma'am, I didn't.

6 Q. So you remained outside?

7 A. Yes, ma'am.

8 Q. And would your firearm have been visible to him?

9 A. It potentially could have been with my jacket.

10 Q. Okay. But you did have a jacket on?

11 A. Yes, ma'am.

12 Q. And was your conversation at that time similar to your
13 first one in that it was conversational?

14 A. Yes, ma'am.

15 Q. After you finished speaking with Mr. Rooney at 5:35, what
16 did you do?

17 A. I stayed in the parking lot for a brief moment. About
18 that time I had contacted ERT, or evidence response team for
19 the FBI, and they had -- were recently getting there.
20 Somebody -- an assistant team leader was there, and we went up
21 and did another assessment of the site and began processing the
22 scene.

23 Q. Okay. When you were done speaking with the defendant, did
24 you go into the police station and have a conversation with
25 Officer Walker?

1 A. Yes, ma'am, I did.

2 Q. Do you remember what you discussed with Officer Walker?

3 A. No, ma'am, I do not.

4 Q. Okay. Now, do you -- sitting here today, do you know if
5 you told Officer Walker that Mr. Rooney had in fact invoked his
6 right to have an attorney?

7 A. I -- I do not recall if I did or not.

8 Q. But you did talk to Officer Walker?

9 A. Yes, ma'am, I did.

10 Q. Do you think -- I know you're not supposed to speculate,
11 but in -- to what capacity you can tell the judge, would you
12 have likely gone into the station and said, "I just finished
13 talking to him, and this is what he told me"?

14 A. It's very likely that -- that I would do that, and then I
15 would discuss my findings with him as well as how the interview
16 had been terminated.

17 Q. Okay. But you don't have, like, an independent
18 recollection of that conversation?

19 A. Unfortunately I do not. I apologize.

20 Q. All right. Now, do you know what Officer Walker did after
21 you spoke with him?

22 A. He went out and spoke to Mr. Rooney as well.

23 Q. Okay. And were you present for that conversation?

24 A. No, ma'am, I was not.

25 Q. After Officer Walker spoke with the defendant, did Officer

1 Walker talk to you again?

2 A. Briefly, yes.

3 Q. Okay. And when did you go up to the -- the scene with
4 ERT?

5 A. Shortly after that.

6 MS. WRIGHT: Okay. Your Honor, may I have just a
7 moment, please?

8 THE COURT: Yes. Take as long as you need.

9 MS. WRIGHT: Thank you.

10 BY MS. WRIGHT:

11 Q. You mentioned earlier that you had some skepticism about
12 what was going on and what was taking place. Can you elaborate
13 on that a little bit?

14 A. Yes, ma'am. I work with other law enforcement's officers
15 and being in another law enforcement agency which I have
16 learned that it's not uncommon for animal remains to be
17 confused as human remains and reported as such; so I, initially
18 when I received the call, was skeptical enough to know to
19 approach this entire thing with a very critical thinking
20 standpoint and that I needed to see and verify for myself
21 that these were in fact human remains and then proceed from
22 there.

23 Q. Okay. And so after you went to the scene, were you
24 satisfied that what you saw was human remains?

25 A. Yes, ma'am, I was.

1 Q. But you had been told, at least, prior to going up to the
2 scene that the conservation officers who had located
3 Mr. Rooney, that they thought what was in the -- the -- what
4 we're calling the burn pit was human remains?

5 A. That -- that is correct.

6 Q. Okay. But you wanted to be satisfied for yourself of
7 that?

8 A. Yes, ma'am.

9 MS. WRIGHT: All right. Your Honor, just to be sure,
10 I believe you did accept Government Exhibit 4, which would be
11 the FD-395.

12 THE COURT: Yes. It was offered and received without
13 objection.

14 Is that -- I'm correct about that, Ms. Steenbock?

15 MS. STEENBOCK: I think so. I think so, yeah. No
16 objection.

17 THE COURT: You don't object?

18 MS. STEENBOCK: Oh, no. No, no objection.

19 THE COURT: Thank you.

20 MS. WRIGHT: All right. I have nothing further at
21 this time, Your Honor.

22 THE COURT: Okay. Ms. Steenbock, do you have
23 cross-examination?

24 MS. STEENBOCK: Yes. Thank you, Judge.

25 THE COURT: You may proceed when you're ready.

1 CROSS-EXAMINATION

2 BY MS. STEENBOCK:

3 Q. The first time that you approached Mr. Rooney you found
4 him in the back seat of a cruiser; correct?

5 A. It was -- yes, ma'am.

6 Q. All right. And the cruiser was locked, and you think
7 Walker maybe unlocked the door for you to get into the cruiser?

8 A. Yes, ma'am.

9 Q. Okay. And you found him to be naked save for a blanket
10 over his lap; correct?

11 A. That is correct.

12 Q. And you found him to be handcuffed; correct?

13 A. Correct.

14 Q. And you testified in direct examination that your goal was
15 to suss out whether or not he had physical evidence on his
16 body; right?

17 A. Correct.

18 Q. Okay. So did you bring a camera with you to memorialize
19 what you saw on his body?

20 A. No, ma'am.

21 Q. All right. Did you investigate through other officers who
22 had already had contact with Mr. Rooney whether or not they
23 observed injuries or physical evidence that you wanted to
24 capture?

25 A. I do not recall if I asked them that or not, ma'am.

1 Q. And you also were interested in finding out if he was
2 under the influence or intoxicated; right?

3 A. Correct.

4 Q. All right. So did you bring with you a device to measure
5 that?

6 A. No, ma'am, but I knew the local -- state and locals had
7 that capability.

8 Q. Okay. And so did you find out if they had already PBTed
9 him?

10 A. I found out later in the event that they had.

11 Q. Okay. So this was your main interest, but you didn't find
12 out beforehand who had already given him a PBT and what that
13 result was; correct?

14 A. No, ma'am, I did not.

15 Q. All right. So your interests being this physical evidence
16 and his intoxication level, so the first thing you say to
17 Mr. Rooney is, "What's going on today? Why are you in here?"
18 Correct?

19 A. I don't remember if that was my exact words.

20 Q. Well, did you listen to your recording to prepare for
21 today's hearing?

22 A. Yes, ma'am, I did.

23 Q. Okay. So if I'm telling you the first thing out of your
24 mouth is, What's going on here, what -- why are you in here,
25 would you say that that's probably true, or do you think that

1 you have a dispute with that?

2 A. No. It's probably true, ma'am.

3 Q. All right. So you didn't first ask him, "Are you drunk,
4 Mr. Rooney?" Correct?

5 A. No, ma'am.

6 Q. You didn't first ask him, "What drugs have you taken
7 today, Mr. Rooney," did you?

8 A. No, ma'am.

9 Q. All right. You didn't ask him to show him your face -- or
10 to show you his face and take a flashlight to him, did you?

11 A. No, ma'am.

12 Q. All right. Instead you engaged in the discussion with him
13 about what he had done that day; correct?

14 A. Correct.

15 Q. And then after he told you his situation, what he had
16 done, and his family, then you ask him, "Do you guys fight a
17 lot? I mean, what's going on?" Isn't it true you asked him
18 that question?

19 A. Yes, ma'am, I did.

20 Q. Okay. And so in your mind, at this point you're not in
21 the weeds yet, and you haven't gotten to a point where you
22 should maybe put the brakes and advise my client of his rights?

23 A. Ma'am, I don't understand your question. I'm sorry.

24 Q. You're aware, are you not, that in the middle of an
25 interrogation, if you find that you have crossed the line that

1 you can stop, take a break, and advise someone of their rights;
2 correct?

3 A. Yes, ma'am.

4 Q. You're also aware that you can tell someone, hey, don't go
5 any further 'cause you have the right to remain silent and I
6 need to tell you about your constitutional rights; correct?

7 A. Correct.

8 Q. But you instead solicited, "You guys fight a lot? I mean,
9 what's going on?" Correct?

10 A. Yes, ma'am, I did.

11 Q. Because at this point you might be suspicious, but you
12 certainly have been told that there are human remains at a
13 crime scene; correct?

14 A. That's what I was told in the phone call, yes, ma'am.

15 Q. Right? You can be as suspicious as you like, but this is
16 what you have been told is that there's human remains; correct?

17 A. Yes, ma'am.

18 Q. And you're aware that Mr. Rooney is in custody upon
19 suspicion of his involvement with those human remains; correct?

20 A. About Winnebago, yes, ma'am.

21 Q. Okay. Yes or no. You were aware of that?

22 A. Aware he was in custody, yes, ma'am.

23 Q. Okay. And you were also aware that there is a missing
24 female, specifically Mr. Rooney's significant other; correct?

25 A. I don't believe I was advised she was missing. I knew

1 they had said they had found remains. I don't recall.

2 Q. Okay. So after -- when you went in and talked to BI Agent
3 Walker before you talked to Mr. Rooney, he did not tell you at
4 any point during that conversation that there is a missing
5 woman, specifically Mr. Rooney's significant other?

6 A. I don't recall if I initially learned that she was missing
7 from either speaking with him or I'd learned that going in
8 there. I don't recall.

9 Q. Well, after you asked him, you know, "Why are you in this
10 cruiser," he told you, "I'm being detained because they haven't
11 found my wife." Correct?

12 A. Correct.

13 Q. Okay. So that's also some information that there's a
14 missing person; right?

15 A. Yes, ma'am.

16 Q. Okay. Did you make any effort to get Mr. Rooney any
17 clothes?

18 A. No, ma'am, I did not.

19 Q. Okay. Because you -- you didn't want them to wash him off
20 or -- or tamper with anything that might be on his body;
21 correct?

22 A. Yes, ma'am.

23 Q. And did you -- this is your crime scene once you arrive;
24 correct? This is your investigation?

25 A. Correct.

1 Q. Right? This is an FBI case; right?

2 A. Yes, ma'am, it is.

3 Q. Okay, all right. And this is your first homicide?

4 A. Yes. At that time it was.

5 Q. Okay. So I assume by human nature that you're trying to
6 be as careful and thorough as possible?

7 A. Yes, ma'am, I was.

8 Q. All right. So did you issue a general order to the local
9 police to not tamper with him so that you could preserve any
10 evidence on his body?

11 A. I believe I only advised them not to touch anything at the
12 actual crime scene.

13 Q. Okay. So in your mind when you walked away to the crime
14 scene, they could have took him and showered him up and given
15 him a cup of coffee, for all you know; right?

16 A. Yeah, correct.

17 Q. Okay. You didn't do anything to prevent that process of
18 booking him in at Thurston County; correct?

19 A. I did not impede, no, ma'am, if that's what you're asking.

20 Q. I'm not asking whether you impeded it. I'm asking, as far
21 as you knew, these cops could have done that. That's what you
22 thought they were going to do with him; right?

23 A. I was under the impression they were trying to take him to
24 Thurston County relatively soon.

25 Q. Okay. And you did not issue an order to prevent them from

1 doing that?

2 A. No, ma'am.

3 Q. All right. When you were talking to Mr. Rooney the first
4 time, about halfway through the interrogation he told you, "I
5 didn't think I was in any trouble" in response to you asking
6 him if he'd ever been in trouble before; correct?

7 A. Correct.

8 Q. And then after that you proceeded to interrogate him about
9 a history of domestic violence; correct?

10 A. I asked him that, yes, ma'am, I did.

11 Q. So after that you go to the crime scene, and you come
12 back, and at that point you decide that you're going to talk to
13 him again; right?

14 A. Yes, ma'am.

15 Q. All right. And did you use the same recording device as
16 you had used in the first interrogation?

17 A. Yes, ma'am, I did.

18 Q. Okay. So how is it that you could find the second
19 recording and commemorate your conversation in a report and the
20 first recording is missing?

21 A. Negligence, honestly, because my first one starts with me
22 Mirandizing, and the other one doesn't.

23 Q. Okay. So do you --

24 A. And so when I listened to it, I didn't listen to it long
25 enough to get it to play into hearing us both speak, and so

1 when I listened to the initial part, I was, like, that's a
2 transport one, because I was in a hurry.

3 Q. You're aware, certainly, if you talk to a prisoner during
4 transport that that's a custodial interrogation; right?

5 A. Yes, ma'am.

6 Q. Okay. So you'd be required to turn it over even if it is
7 a transport conversation; right?

8 A. Not to my knowledge, ma'am, no.

9 Q. You're not aware of a conversation you have with someone
10 while they're in your custody that that is discoverable?

11 A. I -- I often just turn my recorder on in general just when
12 I am transporting whether there's a conversation or not.

13 Q. Okay. You're aware of the general progression order in
14 this case, are you not, sir?

15 A. Can -- can you explain that question, ma'am?

16 Q. You're aware that this Court ordered the government and
17 its agents to produce discovery to include all of the
18 defendant's statements, written or oral or that you have record
19 of; correct?

20 A. Yes, ma'am.

21 Q. And you failed to comply with that court order; correct?

22 A. I complied at the time to the best I knew. I was unaware
23 I had it.

24 Q. So I just referenced document number 22, which is part of
25 the court record. The judge ordered on June 22nd that you

1 produce those things to me, and you failed to do so; correct?

2 A. Yes, ma'am, yeah.

3 Q. All right. And you did that because you sped through the
4 first interrogation right to the second one and didn't think
5 the first one was important; right?

6 A. I didn't know it was related to this case.

7 Q. All right. So when -- you didn't memorialize it by making
8 a police report either; correct?

9 A. No. No, ma'am, I did not.

10 Q. Okay. So you no doubt -- I'm not going to exhaust you
11 here, but you no doubt were trained the purpose of a 302 is to
12 memorialize as quickly as possible the things that occurred so
13 that you can use it to prepare for a trial so that the parties
14 can be aware of what happened; correct?

15 A. Correct.

16 Q. And you didn't do that in this instance even though after
17 you walked away and went home that night you knew you talked to
18 him twice; correct?

19 A. Correct.

20 Q. And you no doubt had conversations with the government's
21 attorney asking you for memorialization of the first
22 interrogation; correct?

23 A. I don't recall if they asked or not.

24 Q. She never asked you about the first statement?

25 A. We had a verbal conversation about it, yes, ma'am.

1 Q. And you told her that you didn't have any record of it and
2 that you weren't going to write a report?

3 A. I do not recall if that's what was said.

4 Q. Okay. You didn't write a report?

5 A. No, ma'am.

6 Q. You never have written a report to this day.

7 A. No, ma'am, I have not.

8 Q. Okay. So you have had a chance to look at other officers'
9 reports that were prepared for this case?

10 A. Yes, ma'am.

11 Q. Okay. So you've reviewed Trudell's report and Walker's
12 reports?

13 A. Yes, ma'am.

14 Q. And you know that both those reports indicate that you
15 talked to Rooney twice?

16 A. Yes, ma'am.

17 Q. And when did you first become aware that that's what those
18 reports indicated?

19 A. Whenever I initially read them. I don't remember when
20 that was, though.

21 Q. May, June, July?

22 A. Yes, ma'am. Probably around May or June-ish.

23 Q. Okay. So what efforts did you take to memorialize your
24 interview as it's becoming less and less fresh in your mind?

25 A. None.

1 Q. What efforts did you take to find or go back and find out
2 if there was a recording from that day?

3 A. None after my initial look for it.

4 Q. Okay. So you found this recording after I filed my motion
5 to suppress and called you out for not doing it; right?

6 A. No, ma'am. I don't -- it wasn't intentional.

7 Q. Literally within days.

8 A. Say it again, ma'am.

9 Q. Literally within days of my filing my motion to suppress,
10 you somehow unearth this magical recording. That has nothing
11 to do with me calling you out for not doing your job?

12 A. Oh, I -- no. I'm not arguing that, ma'am. Yes. The
13 timeline, yeah. I understand.

14 Q. All right. When you came back the second time, did you
15 advise Mr. Rooney that the conversation -- the content of the
16 conversation you had before could not be used against him in
17 court?

18 A. No, ma'am, I did not.

19 Q. Okay. You didn't go into any discussion about how that
20 prior statement, I didn't realize, or I didn't intend to get
21 into it? You didn't address it at all; correct?

22 A. No, ma'am, I did not.

23 Q. Other than to basically resume your conversation about
24 prior domestic violence; correct?

25 A. I -- I did continue the conversation, I guess, yes, ma'am.

1 Q. Okay, all right. And you didn't tell him -- strike that.

2 You indicated on direct examination that Mr. Rooney was
3 basically in the same place as you had left him; correct?

4 A. Correct.

5 Q. All right. But you can't remember as you sit here today
6 who unlocked the cruiser for you the second time you talked to
7 him?

8 A. No, ma'am, I cannot.

9 Q. Okay. If the reports indicated that it was Officer
10 Trudell, do you think that that might be accurate?

11 A. Yes, ma'am.

12 Q. Okay. And is it possible that Trudell stood maybe not
13 within earshot but in the vicinity while you talked to
14 Mr. Rooney the second time?

15 A. So I -- I had focused myself inside the car but I -- I
16 don't know exactly where he was, but it's likely he would have
17 been in the parking lot, yes.

18 Q. Okay. If his report says, "I'm standing near Officer
19 Roberts, but because of wind I can't really hear what they're
20 talking about," is that fair?

21 A. Yes, ma'am.

22 Q. Okay. And did you tell Trudell after you were done
23 talking to Mr. Rooney that he had invoked his right to have
24 counsel?

25 A. Ma'am, I don't recall.

1 Q. Okay. Did you tell him that Mr. Rooney had elected to
2 remain silent?

3 A. I do not recall if I said that.

4 Q. Okay. Is there some reason you can't remember this stuff?

5 A. 'Cause that -- when he said he -- the conversation ended,
6 I instantly transitioned to getting to the crime scene and
7 processing it. It had been raining, and I was worried at the
8 time --

9 Q. That's not what I'm asking you. I'm asking you why you
10 can't remember some of these details.

11 A. Because I wasn't focused on that, those type of
12 interactions. I was focused on getting back to the crime
13 scene.

14 Q. Okay. So if Trudell says in his report that you advised
15 him that Rooney indicated his desire to remain silent, you
16 would not dispute that you may have mentioned that to Trudell
17 after you finished up with Rooney?

18 A. No, ma'am, I would not.

19 Q. All right. And then you went into the -- to the station,
20 and maybe it would seem consistent with your policy to share
21 with Walker what Rooney told you and how the interview ended;
22 correct?

23 A. Correct.

24 Q. All right. Have you ever done cases on a Native American
25 reservation before this case?

1 A. Yes, ma'am, I had.

2 Q. Okay. How many cases had you done?

3 A. I -- I really have no idea on a numerical figure.

4 Q. Okay. A lot of case -- I mean, you'd only been an officer
5 for maybe 18 months, all right, by the time this occurred;
6 correct?

7 A. Yes, ma'am.

8 Q. Okay. So you're not terribly experienced with dealing
9 with Native Americans. Would you say that's fair?

10 A. Yes, ma'am, I would agree with that.

11 Q. Okay. 'Cause one of the things you told Mr. Rooney is
12 that you normally work on cases where people blow shit up. Is
13 that even true?

14 A. No, ma'am, it's not.

15 Q. All right. You were trying to build some sort of rapport
16 with Mr. Rooney where he would understand the gravity of your
17 position; correct?

18 A. Correct.

19 Q. All right. This -- this certainly is obvious to all of us
20 here, but I need you to say it. When you were trained at
21 Quantico --

22 A. Uh-huh.

23 Q. -- you were trained on what Miranda requires of you, as an
24 officer?

25 A. Yes, ma'am.

1 Q. Okay. And so you certainly know that if you question a
2 suspect when they're in custody that you need to advise them of
3 their rights per Miranda; correct?

4 A. Yes, ma'am.

5 Q. All right. And you would agree, as you testified here
6 today, that for whatever your reason is that you failed to do
7 so in the first interrogation; correct?

8 A. Correct.

9 Q. All right. And that you didn't take any measure to cure
10 that neglect when you talked to Mr. Rooney the second time;
11 correct?

12 A. Correct.

13 MS. STEENBOCK: Nothing further.

14 THE COURT: Redirect.

15 MS. WRIGHT: Your Honor, may I have just a moment,
16 please?

17 THE COURT: Take as much time as you need.

18 MS. WRIGHT: Thank you.

19 REDIRECT EXAMINATION

20 BY MS. WRIGHT:

21 Q. I'm going to start right where Ms. Steenbock just left off
22 as far as not taking any measures to cure your previous failure
23 to advise him of his rights.

24 In that second interview at 5:35, you rights advised him?

25 A. Correct.

1 Q. Okay. So that would have been your measure to inform him
2 of his rights; correct?

3 A. Correct.

4 Q. All right. Now, in your training were you told that in a
5 subsequent interview with a defendant that you're required to
6 inform them that their previous statement could not be used?

7 A. No, ma'am, I was not.

8 Q. And a question came up in your cross-examination of
9 whether it's consistent with your -- your policy to tell
10 another officer, in this case it would be Officer Walker, what
11 you discussed with the defendant. I want to ask if there's a
12 policy on that.

13 A. No, ma'am, not -- not as far as like a --

14 Q. Like an FBI policy?

15 A. No. Nothing in a three-ring binder, no.

16 Q. Okay.

17 A. That I'm aware of.

18 Q. So is it more just kind of a practice among investigators
19 that you might discuss what a defendant said?

20 A. Yes, ma'am.

21 Q. But there is no policy?

22 A. Not that I'm aware of, no.

23 Q. Okay. And then when you went to speak with the defendant,
24 did you in fact observe his physical demeanor?

25 A. Yes, ma'am.

1 Q. And did you observe any signs of intoxication?

2 A. No, ma'am.

3 Q. Did you observe whether he appeared to be under the
4 influence of a -- of a drug or any other kind of substance?

5 A. No, ma'am. He appeared sober.

6 Q. Okay. And you had not met him before; correct?

7 A. Correct.

8 Q. So what made you feel comfortable saying that he appeared
9 sober?

10 A. There was no odor of anything going on. He seemed very
11 articulate in his statements. He was able to complete
12 narratives, and his body mannerisms were articulate.

13 Q. Okay. And as an FBI agent, what authority do you have to
14 issue orders over a tribal police officer?

15 A. None.

16 Q. What authority do you have to issue orders over a BIA
17 officer?

18 A. I have no authority.

19 Q. Now, although you don't necessarily have authority to
20 issue orders to them, I think Ms. Steenbock was getting at
21 whether or not you could secure a scene in some way.

22 A. Yes, ma'am.

23 Q. Is there a collaborative approach in a case like this
24 where tribal law enforcement are the -- are the initial
25 responders and you come in as the FBI?

1 A. Somewhat, yes, ma'am.

2 Q. Okay. But you don't have, once you come in as an FBI
3 agent, the ability to tell the tribal officers or the BIA
4 officers what they're going to do?

5 A. No.

6 Q. And then did you testify that the recording which you --
7 you did not locate until after the motion to suppress was filed
8 that it was labeled as a transport recording?

9 A. Yes, ma'am.

10 Q. And that you didn't know it was related to this case?

11 A. Correct.

12 MS. WRIGHT: I have nothing further, Your Honor.

13 THE COURT: Ms. Wright, is there any reason that this
14 witness cannot be excused?

15 MS. WRIGHT: Do you have anything?

16 I don't think so, Your Honor.

17 THE COURT: Ms. Steenbock.

18 MS. STEENBOCK: No. I think he can be excused.

19 THE COURT: Okay. Thank you for your testimony, sir.
20 You may stand down.

21 Ms. Wright, do you have any additional evidence today?

22 MS. WRIGHT: No, not today, Your Honor. I think it
23 makes the most sense to -- to continue on Friday once we have
24 Officer Walker here.

25 THE COURT: And that hearing's been scheduled for

1 10:30; correct?

2 MS. WRIGHT: That is my understanding.

3 THE COURT: Okay. Well, we'll recess till Friday,
4 December 18th, at 10:30 in the morning here in Courtroom No. 6.

5 MS. WRIGHT: Thank you, Judge.

6 THE COURT: Thank you.

7 MS. STEENBOCK: Thank you, Your Honor.

8 THE COURT: Defendant is remanded back to the custody
9 of the U.S. Marshal.

10 (Recessed at 10:28 a.m.)

11 (At 10:38 a.m. on December 18, 2020; with counsel and the
12 defendant present:)

13 THE COURT: 20CR104. We're scheduled for a
14 continuation of the motion to suppress that was filed on behalf
15 of the plaintiff *[sic]*. We had testimony and exhibits earlier
16 in the week, and I understand now that the government has one
17 additional witness.

18 MS. WRIGHT: Yes, Your Honor.

19 THE COURT: Will you please enter your appearance for
20 today.

21 MS. WRIGHT: Good morning, Your Honor. Lecia Wright
22 and Sean Lynch for the United States.

23 THE COURT: Good morning to each of you.

24 For the defendant.

25 MS. STEENBOCK: Good morning, Judge. Kelly

1 Steenbock, Assistant Public Defender, on behalf of Mr. Rooney,
2 who's seated at counsel table with me this morning.

3 THE COURT: Good morning to each of you.

4 How are you feeling today, Mr. Rooney?

5 THE DEFENDANT: (Indiscernible.)

6 THE COURT: All right?

7 THE DEFENDANT: Yeah.

8 THE COURT: I apologize to counsel and the parties
9 for our seven or eight-minute delay. I had a civil hearing
10 that took a little bit longer than I had hoped it would.

11 With that said, if you want to go ahead and call your
12 first -- your witness, you may do so.

13 MS. WRIGHT: Government calls Anthony Walker to the
14 stand, Your Honor.

15 THE COURT: Mr. Walker, will you come up here to the
16 witness stand?

17 We'll have you sworn in.

18 You can go ahead and take a seat and -- and sit in front
19 of the microphone.

20 Sir, would you raise your right hand?

21 ANTHONY WALKER, PLAINTIFF'S WITNESS, SWORN

22 THE COURT: Could you please state your full name?

23 THE WITNESS: Anthony Walker.

24 THE COURT: Okay. Ms. Wright, you may proceed.

25 MS. WRIGHT: Thank you.

1 DIRECT EXAMINATION

2 BY MS. WRIGHT:

3 Q. Good morning, Officer Walker. Will you please tell the
4 judge a little bit about what you do for a living?

5 A. I am a federal police officer with the Bureau of Indian
6 Affairs-Office of Justice Services. I've been employed there
7 since 2013.

8 Q. Which off- -- oh, sorry.

9 A. What's that?

10 Q. Didn't mean to cut you off. Which office do you work out
11 of?

12 A. Currently stationed at the Winnebago agency, Winnebago
13 Police Department.

14 Q. And how long have you been there?

15 A. Since 2013.

16 Q. What sort of training did you have to be an officer with
17 the BIA?

18 A. I -- prior to me becoming an officer, I received my
19 associate's degree in criminal justice. I also received my law
20 enforcement certification at the Federal Law Enforcement
21 Training Center in Artesia, New Mexico, under the Indian police
22 academy.

23 Q. All right. And do you have any other training
24 qualifications that you have to stay up to date with during the
25 year?

1 A. Yes. We have a mandatory 40 hours of in-service training
2 every year.

3 Q. Prior to working for the Winnebago agency, did you have
4 any other law enforcement experience?

5 A. Just receiving my associate's degree and then also working
6 cas- -- casino security and then also having another federal
7 position as a firefighter.

8 Q. All right. At the Winnebago Police Department, what are
9 your current duties and responsibilities?

10 A. I'm currently the field training officer as of 2019, also
11 certified evidence control technician. I've been the evidence
12 control tech for the agency since 2014 and also a certified
13 teaching instructor.

14 Q. All right. And so all of those duties you've just
15 described, were those your duties in May of 2020?

16 A. Yes.

17 Q. In May of 2020, did you become involved in a call for
18 service involving Kozee Decorah asking for assistance at Honey
19 Creek Road?

20 A. Yes.

21 Q. And how did you become involved?

22 A. I began my tour of duty at 11 p.m. that night, and I
23 received a call from swing shift officer -- Winnebago Tribal
24 Officer Ken LaPointe advising me of the pending traffic that
25 was going on at that time.

1 Q. All right. And was this on May 16th, 2020, at 11 p.m.
2 that you came on duty?

3 A. Yes.

4 Q. And what did Officer LaPointe advise you about a -- about
5 the pending call?

6 A. That they were apparently looking for Kozee Decorah and
7 saying that she was stuck down there on that minimum
8 maintenance road.

9 Q. All right. And so when you came on duty at 11 o'clock,
10 what did -- what did you do with that information?

11 A. I responded to that location and then listened to the
12 traffic over the radio that two conservation officers were
13 attempting to respond to the female's residence to see if they
14 made it home and then also that they'd contacted family members
15 to see too that -- if they made it home or not.

16 Q. Okay. And so just to back up a little bit, did you become
17 aware after coming on duty that conservation officers did in
18 fact go to Honey Creek Road?

19 A. Yes.

20 Q. And can you describe for the judge on the Winnebago
21 Reservation what is Honey Creek Road, and is there another name
22 for it?

23 A. Yeah. It's a nickname for the road, and it's actually BIA
24 Road 50. It's a minimum maintenance road down towards the
25 Missouri River. We call it Big Bear Park. It's heavily

1 wooded. It's kind of out in the country from Winnebago, the
2 actual town.

3 Q. Okay. And the conditions that night, do you recall what
4 they were, weather conditions?

5 A. Yeah. It had been raining that day. To my understanding
6 the roads were -- were muddy and wet.

7 Q. All right. And you said that you had started to respond
8 to that location?

9 A. Yes.

10 Q. When you say "that location," what were you referring to?

11 A. To BIA Road 50, to where the officers were now searching.

12 Q. You were going to join them?

13 A. Yes.

14 Q. Were you able to join them at that time?

15 A. No. I actually received another call for service at a
16 different location in town in Winnebago that I had to turn away
17 from.

18 Q. All right. And did you wrap up responding to that call
19 and then at some point return your attention to the
20 investigation of Kozee Decorah?

21 A. Yes. After responding to that call, I ended up going to
22 the Winnebago Police -- Police Station there and then was
23 trying to get information on what actually was going on to --
24 at that time what I had missed, you know, what was on that
25 call.

1 Q. All right. And did you learn at approximately ten after
2 midnight on May 17th, 2020, that Officer Snowball advised they
3 had located a male and an infant?

4 A. Yes.

5 Q. All right. And after Officer Snowball advised that, what
6 happened?

7 A. After they advised that they located the male and female,
8 I was just listening to the radio traffic, and they were
9 talking amongst themselves but said that they were going to
10 continue looking for a female.

11 Q. Okay. And at some point did Officer Snowball let you know
12 that they would be transporting the male and the infant back to
13 the police department?

14 A. Yes. They advised that one of the voluntary firefighters
15 were going to transport the male and the infant.

16 Q. Do you know what time that was?

17 A. I have to refer to my report, if that's okay.

18 Q. Do you have that in front of you?

19 A. Yes.

20 MS. WRIGHT: Your Honor, may he refer to his report?

21 THE COURT: Yes.

22 MS. WRIGHT: Thank you.

23 A. According to my report the time was at 1:02 in the
24 morning.

25 BY MS. WRIGHT:

1 Q. Okay. And then after being advised that they were
2 transporting a male, did you at some point find out who in fact
3 was being transported back?

4 A. Yes. I contacted Officer Snowball, and he relayed that
5 information to me.

6 Q. Who was it that they were bringing back?

7 A. Jonathan Rooney and his child.

8 Q. Okay. Was there anything else that you learned about
9 Mr. Rooney and the child at that time?

10 A. Officer Snowball advised that Jonathan was nude, he had
11 only a blanket to cover himself, his private genital area, and
12 he also had some injuries.

13 Q. Okay. Did he say anything about the child, the condition
14 of the infant?

15 A. Said the child appeared to be okay.

16 Q. All right. And did at some point you learn some -- let me
17 ask you this: Where was it that Mr. Rooney was located?

18 A. He advised me they located him inside the cabin on that
19 road there.

20 Q. All right. And can you -- have you yourself seen the
21 cabin?

22 A. Not prior to that, no.

23 Q. Okay. But after -- during the course of this
24 investigation, you have observed it personally?

25 A. Yes.

1 Q. And you had described the area of Honey Creek Road or BIA
2 Road 50 as being a wooded area --

3 A. Yes.

4 Q. -- and somewhat away from the -- the main town of
5 Winnebago. Was the cabin likewise in this wooded remote area?

6 A. Yes. From the minimum maintenance road, you -- you would
7 not be able to see it. It is kind of tucked away up on a hill
8 inside the trees.

9 Q. Okay. And I'll take a pause just a moment.

10 And so he was located. Was it inside the cabin?

11 A. Yes.

12 Q. Along with the infant?

13 A. Yes.

14 Q. And did you learn anything else about what we're referring
15 to generally as the scene? Was anything else found?

16 A. Police Officer Snowball advised that there was -- it
17 appeared to be a fire outside the cabin and also appeared to be
18 human remains.

19 Q. Okay. Now, once you became aware that the conservation
20 officers and the firefighters had located what appeared to be
21 human remains and they said they were bringing Mr. Rooney down
22 to the Winnebago Police Department, did you do anything in
23 between learning that Mr. Rooney would be brought to the police
24 department and him actually arriving there?

25 A. Yes. I contacted the other officer that was on duty. It

1 was Winnebago Tribal Officer Marcus Trudell, advised him to
2 come to the police station there, and then also contacted a
3 ambulance to have them check out the child --

4 Q. Okay.

5 A. -- once they arrived.

6 Q. All right. And when they arrived, do you know what time
7 that was?

8 A. I'd have to refer to my report 'cause I have to -- is that
9 okay?

10 Q. Yes, it is.

11 A. That time would be at 1:18 in the morning.

12 Q. All right. Now, when Mr. Rooney arrived at the police
13 department, was he taken into the police department?

14 A. No.

15 Q. Where was he put?

16 A. He was transported from the fire department vehicle into a
17 Winnebago Police vehicle at that time.

18 Q. What kind of vehicle was he placed into?

19 A. A regular patrol vehicle, fully marked.

20 Q. Are those smaller sedans? Is it an SUV? What kind of car
21 is it?

22 A. It was a Chevy Silverado pickup.

23 Q. All right. And does it have a cab in it so like the front
24 driver's seat, passenger seat, and then a cab behind it, like
25 back seats, or is it just a two-person truck?

1 A. No. It's a crew cab, has a back seat --

2 Q. Okay.

3 A. -- and then a rear partition.

4 Q. All right. Now, did you make any decision with respect to
5 Mr. Rooney and whether you would want to interview him or speak
6 to him when he arrived at the police department?

7 A. Yes. I wanted to ask if he knew where Kozee was.

8 Q. All right. And so when he arrived, was he in -- placed in
9 handcuffs?

10 A. Yes. He was detained at that time.

11 Q. All right. And with him being detained, did you in fact
12 make contact with him at that time?

13 A. Yes.

14 Q. And did you advise him when you made contact with him
15 initially of his Miranda rights?

16 A. No.

17 Q. Why did you not do that at that initial conversation?

18 A. I wasn't going to be interrogating him. I was just asking
19 if he had any information on where she was located to where we
20 could start our search, 'cause we were still actively searching
21 for her.

22 Q. All right. And although you had knowledge that there were
23 remains that the conservation officers identified as human
24 remains, did you at the time you made contact with Mr. Rooney
25 initially believe those remains to be Ms. Decorah?

1 A. No. At that time Officer Snowball stated he believed them
2 to be human remains, but he did not confirm.

3 Q. All right. And so when you made contact with him, you
4 were still attempting to find Ms. Decorah?

5 A. Yes.

6 Q. And other than asking him if he knew where she was, did
7 you ask him any other questions?

8 A. I asked him if it would be okay if the ambulance would
9 check out the child, if they would be able to look over the
10 child.

11 Q. All right. And when you made contact with him at this
12 initial occasion -- let me ask you this: Did -- did you know
13 him? Did you have a prior relationship with Mr. Rooney?

14 A. Yes, I did. Me and Jonathan are mutual -- yeah, I know
15 him.

16 Q. Okay. Have you ever spent any time with him socially?

17 A. No.

18 Q. Have you ever -- have you guys ever been to family
19 functions together or work functions, anything like that?

20 A. No. I would say just religious functions --

21 Q. Okay.

22 A. -- at church.

23 Q. And at those religious functions did the two of you ever
24 engage with one another, become friendly, or anything like
25 that?

1 A. Like I said, it was just mutual.

2 Q. Okay. Did you have an occa- -- on this occasion when you
3 spoke with him first at the vehicle, did you observe his
4 demeanor?

5 A. Yes.

6 Q. How did he appear to you?

7 A. He appeared to be normal as if it was just any other day.

8 Q. Okay. Did he show any signs of being intoxicated or under
9 the influence of any kind of drug?

10 A. No.

11 Q. All right. And did he in fact speak to you
12 conversationally at the time when you made contact with him?

13 A. He just said he didn't know where she was.

14 Q. All right. Did you ever raise your voice at him or use
15 any show of force when you approached him?

16 A. No.

17 Q. Can you describe for the judge, were you in uniform?

18 A. Yes, I was in full duty uniform.

19 Q. And does that include your service weapon?

20 A. Yes.

21 Q. Would that have been visible to Mr. Rooney?

22 A. Yes.

23 Q. Okay. And do you know if you ever, you know, touched your
24 weapon or made any display with it?

25 A. No.

1 Q. All right. When you made contact with him initially, did
2 you record that conversation?

3 A. No.

4 Q. Did you in some way, though, memorialize what he told you
5 about being out with -- with Ms. Decorah? Did you write it
6 down in your report?

7 A. I don't understand the question.

8 Q. I'm sorry. It was a bad question. That first
9 conversation that you had with him, you did not record it;
10 correct?

11 A. No.

12 Q. There is no recording of it, but did you write down at
13 some point what you discussed with him or what he told you?

14 A. No.

15 Q. Did you put that information into your written report?

16 A. Yes.

17 Q. Okay. So other than your written police report, though,
18 it wasn't captured anywhere else?

19 A. Marcus Trudell was present.

20 Q. Okay. And so in your report did you summarize your
21 conversation with Mr. Rooney?

22 A. Yes.

23 Q. And when you made contact with him initially, what did he
24 tell you?

25 A. He stated that he didn't know where she was.

1 Q. All right. Did he tell you about what they were doing at
2 that location or anything at that time?

3 A. No.

4 Q. All right. And after you had contact with him at the
5 vehicle, was he left inside that vehicle?

6 A. Yes.

7 Q. And when you observed him, what was he wearing?

8 A. He had a green-colored blanket covered around his waist
9 covering his private genital area.

10 Q. And you -- did he have a shirt on?

11 A. No.

12 Q. Were you able to observe anything on his body?

13 A. He did have some physical injuries on his face, his
14 shoulder, arm area.

15 Q. Okay. And was there anything else notable about him from
16 having contact with him?

17 A. His hands appeared to be dirty, kind of dark colored a
18 little bit, and then he smelled of smoke from a fire.

19 Q. When you spoke with him at this initial contact, did you
20 get inside of the vehicle and sit next to him, or where were
21 you positioned?

22 A. I was face-to-face with him. I did not get in the
23 vehicle.

24 Q. So you were standing outside of it with the door open?

25 A. Yes.

1 Q. And Officer Trudell was present as well?

2 A. Yes.

3 Q. Were any other officers present?

4 A. No.

5 Q. Did Mr. Rooney have anything with him other than the child
6 and the blanket?

7 A. He had a pair of boots that were muddy. He also had his
8 cell phone on him and a wallet.

9 Q. What were done with -- what was done with those items?

10 A. Those items were inside the firefighters' vehicle at that
11 time while he was being transported to the other vehicle, and
12 those items were brought inside the police department by the
13 firefighters.

14 Q. All right. And then did you have any further contact with
15 him after that initial discussion with him when he arrived?

16 A. Yes. I asked him what his child's name was when the
17 ambulance arrived. They needed to know the information.

18 Q. Okay. At some point did you administer a preliminary
19 breath test to him?

20 A. Yes, I did.

21 Q. What time was that?

22 A. I'd have to refer to my report, if that's okay.

23 Q. Okay.

24 A. That time was 2:08 in the morning.

25 Q. And did you yourself administer that test?

1 A. Yes.

2 Q. What were the results of it?

3 A. Results were .000 percent.

4 Q. Did Mr. Rooney remain inside of that police vehicle for
5 the entire time he was at the Winnebago Police Department?

6 A. Yes. We -- we do not bring any -- any people from general
7 public inside the PD even if they're in custody. We keep them
8 inside the vehicle.

9 Q. Why is that?

10 A. We've had several incidents where individuals would either
11 self-harm or destroy property inside the police station. We
12 don't have anywhere we could put them.

13 Q. You don't have a holding cell?

14 A. No.

15 Q. Okay. And was he periodically checked on? Was he given
16 an opportunity to use the restroom? Do you know that?

17 A. I do not know, but I do know that Officer Trudell remained
18 at the police station with him --

19 Q. Okay.

20 A. -- throughout the process.

21 Q. So Officer Trudell was the one who was responsible for
22 that portion of overseeing Mr. Rooney while he was there?

23 A. Yes.

24 Q. Okay. Do you happen to have Officer Trudell's report with
25 you? Or have you ever reviewed his report, I guess I should

1 ask.

2 A. Yes, ma'am, I -- I believe I have it.

3 Q. If Officer Trudell wrote a supplemental report for
4 purposes of this case, is that something you typically would
5 have access to?

6 A. Yes.

7 Q. And is that why you have in fact reviewed it as a part of
8 this case?

9 A. Yes.

10 Q. And so if his report indicates that he had periodically
11 checked on Mr. Rooney, would that be consistent with your
12 understanding as well?

13 A. Yes.

14 Q. While -- after you administered the breath test, did you
15 make any calls or notifications to anybody about where the case
16 was -- was at, at that point?

17 A. Well, I contacted Chief of Police Jason Lawrence, let him
18 know what -- what the incident was going on, what was taking
19 place, and then he referred me to call the on-call FBI special
20 agent.

21 Q. All right. And who was the on-call special agent?

22 A. Special Agent Sam Roberts.

23 Q. And did you also request dispatch to ask for some
24 assistance in searching for Ms. Decorah?

25 A. Yes. I -- I actually contacted the Nebraska State Patrol

1 to see if they would be able to bring their helicopter out to
2 do a flyover of the area. Their helicopter has infrared
3 cameras equipped to it where they would be able to pick up heat
4 signatures inside the wooded areas if she was in fact out there
5 in the woods.

6 Q. All right.

7 A. I also contacted the sheriff's department in Thurston
8 County. They have -- they have the technology to locate a
9 person's cell phone to triangulate your location also. All
10 they needed was her phone number.

11 Q. And did you take these actions after Mr. Rooney was back
12 at the police department?

13 A. Yes.

14 Q. Turning back to your notification of Agent Roberts, did
15 you speak to him on the phone directly?

16 A. Yes.

17 Q. And did Agent Roberts require any kinda -- did you notify
18 him of the human remains that were found?

19 A. Yes. I notified him of what Officer Snowball located, and
20 he stated that he needed a confirmation that those were in fact
21 human remains before he came out.

22 Q. So what did you do at that point?

23 A. I contacted Officer Snowball and relayed the information
24 to him that he needed confirmation.

25 Q. And did Officer Snowball get back to you with that

1 confirmation?

2 A. Yes.

3 Q. And then did at some point Officer -- excuse me, Agent
4 Roberts arrive at the Winnebago Police Department?

5 A. Yes.

6 Q. Was that at approximately 3:08 a.m.?

7 A. I'd have to refer to my report for the time --

8 Q. Okay.

9 A. -- if that's okay.

10 Q. If you would.

11 A. Yes, 3:08 in the morning.

12 Q. When Offic- -- when Agent Roberts arrived, did he come
13 into the police department and speak with you?

14 A. Yes.

15 Q. And at that time what did the two of you discuss?

16 A. I notified him of the -- the incident, of how I obtained
17 the call, and then where we were at, at that time.

18 Q. Okay. And did you inform him that Mr. Rooney was out in
19 the parking lot?

20 A. Yes.

21 Q. Did the two of you discuss a strategy or an approach on
22 how you would speak to the defendant?

23 A. No.

24 Q. Do you know if he ended up speaking with Mr. Rooney?

25 A. Yes.

1 Q. How do you know that?

2 A. We were thinking of a strategy of how to get to the area.
3 The volunteer fire department vehicle was the only vehicle at
4 that time able to get out to that area because of the road
5 conditions. They had some better tires on their vehicle. And
6 Special Agent Roberts advised he wanted to make contact with
7 Rooney before we went out there --

8 Q. Okay.

9 A. -- and at that time that's when he went outside to make
10 contact with him.

11 Q. Okay. So was it as you guys were leaving to go to the
12 scene, to go to the cabin, that Agent Roberts stopped and spoke
13 with the defendant?

14 A. Yes.

15 Q. Were you present during that discussion?

16 A. No.

17 Q. Was Officer Trudell present during that discussion?

18 A. No.

19 Q. And after Agent Roberts finished talking with Mr. Rooney,
20 did he tell you what Mr. Rooney said?

21 A. No.

22 Q. What did you guys do after Agent Roberts finished talking
23 with the defendant?

24 A. We drove down to the area on the pavement and then from
25 there we went onto the minimum maintenance road. We all got

1 into the same vehicle.

2 Q. Okay. And did you at that time make your way up to the
3 cabin and to the fire?

4 A. Yes.

5 Q. And what did you observe when you got up to the cabin?

6 A. About a mile from the minimum maintenance road, you pull
7 into a field, and it's at the bottom of a hill, and from that
8 point you can see where the cabin is. After entering into the
9 field was able to see the cabin and also evidence of a fire
10 smoldering --

11 Q. Did --

12 A. -- next to the cabin.

13 Q. Did you approach that fire and take a look at it?

14 A. Yes. After we arrived, we all exited our vehicles, and
15 then we approached the scene with FBI Agent Roberts.

16 Q. And what did you see at the cabin and at the fire?

17 A. Observed the cabin had an open front door, and then where
18 the fire was, Officer Snowball pointed out to where those
19 remains were, and then we actually observed them for ourselves,
20 and the FBI agent confirmed that those were human remains.

21 Q. Okay. And inside the cabin was there anything notable
22 that you saw?

23 A. Yeah. After FBI Roberts made his phone call, he wanted to
24 do a initial walk-through, and I went with him and observed a
25 mattress on the floor. Also, there was several miscellaneous

1 items and then also blood on the floor.

2 Q. All right. Did you notice blood anywhere else at the
3 cabin?

4 A. There was blood in the doorway and then also outside on
5 the front porch area.

6 Q. All right. Did you take pictures of any of those things?

7 A. Yes, I took photos of the scene.

8 Q. Including the -- the area that had the fire?

9 A. Yes.

10 Q. And after you were done at the scene, what did you do?

11 A. After we got done with the scene, FBI Roberts advised that
12 he was going to call the evidence response team to the scene
13 and that once they arrived that Officer Snowball and Officer
14 St. Cyr would be relieved from securing the scene. We got back
15 into our patrol vehicles and went back to the police station.

16 Q. As you were heading back to the police station, did you
17 and Agent Roberts discuss at that point a strategy on how to
18 approach Mr. Rooney or to interview him?

19 A. No.

20 Q. Did you independently form a strategy of your own without
21 talking to Agent Roberts? Did you have a strategy for how you
22 wanted to talk to him?

23 A. No.

24 Q. And do you know what time you returned to the Winnebago
25 Police Department?

1 A. I'd have to refer to my report, if that's okay.

2 Q. If you would, please.

3 A. It was at 5:23 in the morning.

4 Q. And then at 5:23 what happened when you all arrived back
5 at the police department?

6 A. We arrived. It was myself, Officer Trudell, and then the
7 volunteer fire department. There was two -- two of their
8 employees that were there also that were helping with the
9 search. Kind of conducted a debrief of the incident amongst
10 ourselves.

11 Q. All right. And did Agent Roberts make contact with
12 Mr. Rooney again?

13 A. Yes.

14 Q. And to your knowledge did he interview him at that time?

15 A. Yes.

16 Q. And do you know -- were you present for Agent Roberts'
17 second interview with Mr. Rooney?

18 A. No.

19 Q. After Agent Roberts completed his interview with the
20 defendant, did Agent Roberts come and talk to you?

21 A. He came inside and stated that he was done with his
22 interview.

23 Q. Did he advise you or tell you that Mr. Rooney had asked
24 for a lawyer?

25 A. No.

1 Q. And when you had this conversation with Agent Roberts, did
2 you then make a decision as to whether or not you would speak
3 with the defendant?

4 A. Yes.

5 Q. And did you in fact go speak to him?

6 A. Yes.

7 Q. When you went to speak with him, did you advise him of his
8 rights?

9 A. Yes. For the Bureau of Indian Affairs, we do have a form
10 that we have to fill out when we do advise somebody of their
11 rights asking them questions. Throughout the whole process we
12 add our initials when we ask them the questions if they
13 understand. They actually do sign that form.

14 Q. Did you also record that interview?

15 A. Yes.

16 Q. And have you had an opportunity to listen to that
17 recording since you -- since that day that you recorded it?

18 A. Yes.

19 Q. And was the recording that you listened to a true and
20 accurate copy of your conversation with the defendant?

21 A. Yes.

22 Q. And he did in fact waive his rights with you and spoke to
23 you, but you were not aware that he had previously told Agent
24 Roberts that he wanted to speak with a lawyer?

25 A. There's two questions there.

1 Q. It might have been.

2 A. The first one, yes, and the second one, no.

3 Q. Okay. When you started speaking with Mr. Rooney, do you
4 recall him saying that he had already talked to the FBI guy?

5 A. Yes.

6 Q. And you said, "Well, I'm BIA"?

7 A. Yes.

8 Q. What did you mean by that?

9 A. For us, we enforce tribal law, and at that time he was
10 going to be charged under tribal law.

11 Q. Okay. So were you operating as a BIA officer for purposes
12 of a tribal court at that time?

13 A. Yes.

14 Q. Now, to your knowledge, if the defendant had asked for a
15 lawyer and invoked his rights and you're contacting him after
16 he did that, would any statements that he gave to you be
17 admitted in tribal court?

18 A. I don't know the -- the answer there.

19 Q. You're not sure?

20 A. No.

21 Q. Okay.

22 A. I'm not sure.

23 Q. And when you approached Mr. Rooney, did you -- did you
24 ever app- -- excuse me, appeal to the fact that the two of you
25 were Native American?

1 A. No.

2 Q. Did you ever use any tactics to manipulate him or force
3 him to talk to you?

4 A. No.

5 Q. And then other than speaking to the defendant on this
6 occasion, other than interviewing him, did you also take photos
7 of him?

8 A. Yes. I asked him if he'd be -- consent to take photos,
9 and he said yes.

10 Q. And the conversation that you had with the defendant at
11 that time, was it a heated conversation? Can you describe how
12 you saw that conversation go?

13 A. That was a -- I believe it was a normal conversation as if
14 we're talking amongst ourselves, you and me.

15 MS. WRIGHT: Your Honor, may I have just a moment?

16 THE COURT: Yes. Take all the time you need.

17 BY MS. WRIGHT:

18 Q. Okay. Officer Walker, you did say that you were familiar
19 with Mr. Rooney. You know who he is. Is -- do you see
20 Mr. Rooney here in the courtroom today?

21 A. Yes.

22 Q. Okay. And is that the individual sitting next to
23 Ms. Steenbock at defense -- defense table?

24 A. Yes.

25 MS. WRIGHT: Okay. I have nothing further at this

1 time, Your Honor.

2 THE COURT: Cross-examination.

3 MS. STEENBOCK: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MS. STEENBOCK:

6 Q. Officer Walker, you just indicated that you took
7 photographs of Mr. Rooney when -- after you did your interview
8 with him; is that correct?

9 A. Yes.

10 Q. Okay. The photographs you took of him, though, they
11 represent how he appeared to you when you first had -- had
12 contact with him at one o'clock in the morning; correct?

13 A. Yes.

14 Q. All right. And it appears that the photographs are of him
15 sitting in the back seat of the Chevy Silverado truck. Is that
16 where you took the pictures?

17 A. Yes.

18 Q. All right. But when he first arrived, he was brought
19 there in Offic- -- or firefighter Grant's vehicle; correct?

20 A. Yes.

21 Q. And what kind of car is that?

22 A. I believe it's a pickup also.

23 Q. Okay. All right. And Mr. Rooney had just a blanket on
24 him to cover his genital area?

25 A. Yes.

1 Q. Other than that he was naked?

2 A. Yes.

3 Q. Okay. And just to paint a picture for the court, this
4 blanket is not a large blanket; correct?

5 A. I would believe so, yeah.

6 Q. Okay. Have you had a chance to look at the photos that
7 you took since you first took them?

8 A. Yes.

9 Q. Okay. Did you refresh your memory of what they look like
10 to prepare for today's hearing?

11 A. Yes.

12 Q. Okay. So you would agree with me that the blanket does
13 not even come to his kneecaps when it comes to covering his
14 body; correct?

15 A. Yes.

16 Q. Okay. So does it go all the way around his body?

17 A. Yes.

18 Q. Did it cover his buttocks?

19 A. Yes.

20 Q. Okay. So it wrapped the entirety of his buttocks and his
21 genitals when he transferred himself from the firefighter's
22 vehicle to the cruiser; correct?

23 A. Yes.

24 Q. All right. But you would agree with me that comes about
25 halfway down his thigh; correct?

1 A. Yes, or up to the knees.

2 Q. Pardon?

3 A. To the knees, yes.

4 Q. Your testimony is it comes to the knees?

5 A. Yes.

6 Q. Okay. Would looking at the photographs refresh your
7 memory of how far the blanket comes down?

8 A. Yeah. I believe in a seated position it kind of comes up
9 a little bit higher, but yes, it was to the knees.

10 Q. Okay. So when he was standing, you thought it came down
11 to his knees, but you would agree with me as he's handcuffed
12 and seated in the cruiser, it does not come to his knees?

13 A. Yes.

14 Q. Okay. And you were obviously very respectful when you
15 took the photographs, but would you agree to me that -- with me
16 that, you know, in certain positions that he would not be able
17 to cover his genitals entirely?

18 A. Through that entire time he was covering his genitals.

19 Q. Okay. Why didn't you give him a jumpsuit to put on?

20 A. We don't have any.

21 Q. You don't have any?

22 A. No.

23 Q. Thurston County has them?

24 A. I believe so.

25 Q. Okay. And you didn't make any efforts to get a jumpsuit

1 from Thurston County?

2 A. Thurston County is probably about 25 minutes away, and
3 they would probably only provide that if that's where he was
4 taken to. We do not have a jail for Winnebago.

5 Q. Okay. So it's your testimony that Thurston County would
6 not have probably provided you a jumpsuit for Mr. Rooney?

7 A. No.

8 Q. Okay. And you would agree with me that he was in that
9 cruiser naked for over four hours, almost five hours; correct?

10 A. Yes.

11 Q. All right. And what other efforts were taken so that he
12 could cover his body?

13 A. I believe just the blanket that he had on.

14 Q. That's all?

15 A. Yes.

16 Q. All right. And are you equipped with a body camera on
17 your uniform?

18 A. No.

19 Q. Okay. Is -- other officers are?

20 A. I believe the county is but not -- not BIA.

21 Q. Okay.

22 A. We do not have a policy for that.

23 Q. Okay, all right. Did you come onto your shift any earlier
24 because of this situation with looking for Kozee Decorah?

25 A. No.

1 Q. Okay. So that was your normal shift?

2 A. Yes.

3 Q. You indicated that you were momentarily diverted from the
4 investigation because there was a service call in town; right?

5 A. Yes.

6 Q. Okay. Did you arrest anyone as a result of that?

7 A. No. That man was not located on that call.

8 Q. Okay. Were there any other parties arrested in the area
9 around this evening and into the morning hours?

10 A. No.

11 Q. Okay. So if I told you that there was an individual that
12 was arrested in the wooded area, you're not familiar with that;
13 correct?

14 A. Yeah. I'm not familiar with that.

15 Q. All right. When Officer Robert- -- or Agent Roberts came
16 to the Winnebago Police Department, you indicated on direct
17 examination that you gave him a short briefing on where the
18 situation was; correct?

19 A. Yes, 'cause he did not know where this location was.

20 Q. Okay. Did you also tell him about the physical injuries
21 you observed on Mr. Rooney?

22 A. Yes.

23 Q. All right. And did you tell him that you smelled an odor
24 of fire about his person?

25 A. Yes.

1 Q. And did you tell him that you had administered a
2 preliminary breath test for alcohol?

3 A. Yes.

4 Q. Okay. And you told him your observations of -- of all of
5 those things; correct?

6 A. Yes.

7 Q. All right. And at that point you had not been out to the
8 scene of the cabin; correct?

9 A. Yes, that's correct.

10 Q. Okay. So if offer -- Officer Roberts testified that he
11 thought you had been to the cabin, he would be mistaken?

12 A. Yes.

13 Q. All right. The first time you went up there is with
14 Roberts?

15 A. Yes.

16 Q. All right. And that's after Roberts had talked to
17 Mr. Rooney; correct?

18 A. Yes.

19 Q. When you took these pictures that are depicted in the BIA
20 photo log, did you use a camera or your cell phone?

21 A. It was a department-issued camera that we have.

22 Q. Did Roberts ask you to take any pictures before you went
23 to the scene?

24 A. What do you mean by that question?

25 Q. You told -- you just had a conversation with him in the

1 station --

2 A. Yes.

3 Q. -- saying, you know, he's got a shiner on his face and
4 he's got a bruise on his shoulder. You told him what you saw;
5 right?

6 A. Yeah.

7 Q. Did Roberts say to you, "Let's go take pictures of him
8 right now"?

9 A. No.

10 Q. All right.

11 A. The initial photos are from when we first seen him right
12 there, 4:01.

13 Q. And these are from when you come back; right?

14 A. Yes.

15 Q. Okay. Did Roberts ask you to do another PBT with him
16 watching you do it?

17 A. No.

18 Q. Did you tell or did you discuss with Roberts whether or
19 not you observed any other signs of intoxication or impairment?

20 A. No.

21 Q. Did you tell him you didn't think that Rooney was under
22 the influence?

23 A. What -- I don't understand the question.

24 Q. Well, you testified that when you had contact with him,
25 you did not think he was under the influence of alcohol or

1 drugs; correct?

2 A. That's correct.

3 Q. Okay. Did you tell that to Roberts also?

4 A. Yes.

5 Q. Whose custody was Mr. Rooney in at that time? Winnebago?

6 A. Yes.

7 Q. Okay. So when you call Roberts, it's because the nature
8 of the crime suspected would involve federal jurisdiction;
9 correct?

10 A. Yes.

11 Q. Okay. And you, as a BIA officer, are accustomed to
12 working with the FBI; correct?

13 A. Yes.

14 Q. All right. And so you don't have any squabbles or
15 jurisdictional issues with who does what in an investigation.
16 You work collaboratively with the FBI?

17 A. Yes.

18 Q. All right. You've had a chance to review Officer
19 Trudell's report?

20 A. Yes.

21 Q. And the government attorney asked you on direct
22 examination if you saw in that report where Officer Trudell
23 indicated that he periodically checked on Mr. Rooney; right?

24 A. No. I believe I said I was not sure.

25 Q. Okay. Have you had a chance to review Trudell's report?

1 A. Yes.

2 Q. Okay. So if -- if I tell you that the report indicates
3 that he periodically went out to check on Jonathan, would you
4 say that Officer Trudell put the truth in his report?

5 A. Yes.

6 Q. Okay. There is no log of activity to do with checking on
7 Mr. Rooney; correct?

8 A. No.

9 Q. Okay. So in other words, no officer wrote, "2:15, I
10 offered him a restroom break; 3:05, I offered him water"?
11 There's nothing like that that exists.

12 A. No.

13 Q. And when are these reports made?

14 A. The initial reports are made at the time of the incident
15 that he's after -- afterwards.

16 Q. Okay. So they're not made exactly when you're talking to
17 the person?

18 A. No.

19 Q. Okay. They're made at some point after things settle
20 down --

21 A. After the incident, yeah.

22 Q. Okay. And so your report was made when?

23 A. After the incident.

24 Q. In the morning after Mr. Rooney was taken to Thurston
25 County?

1 A. Yes.

2 Q. You sat in your office and typed it?

3 A. Yes.

4 Q. Okay. Is it done by typing or by dictation?

5 A. Typing.

6 Q. Okay. And why do you do it right after?

7 A. Department policy.

8 Q. Okay. And what other reasons would there be for that?

9 A. Be for -- like I said, department policy. It's habit. We
10 do that --

11 Q. Yeah.

12 A. -- every day.

13 Q. I'm not trying to trick you or anything.

14 A. Yeah. We do it every day so --

15 Q. Well, I mean, but it's also freshest in your mind at that
16 point; right?

17 A. Yeah.

18 Q. All right. You're going to remember everything as much as
19 possible, as accurately as possible, when you write that report
20 right afterwards; right?

21 A. Yes.

22 Q. Officer Trudell wrote in his report that when you and
23 Agent Roberts came back that Agent Roberts went to question
24 Jonathan and during that round of questioning, Jonathan did
25 decide to remain silent.

1 A. Okay.

2 Q. Okay? So that's something that Officer Trudell was aware
3 of at the time. Is that something that you were aware of at
4 the time?

5 A. No.

6 Q. Okay. And why would Officer Trudell know that and not
7 you?

8 A. I believe it was because it was Officer Trudell's vehicle.
9 I don't know. That's the only reason why, I would think.

10 Q. Okay. Was Trudell out with Roberts when Roberts did the
11 interview?

12 A. I don't think so. I don't know.

13 Q. Okay. Did Roberts come in and brief Trudell separately
14 from briefing you?

15 A. I don't know.

16 Q. How long prior to May of 2020 have you known Jonathan
17 Rooney?

18 A. I can't give you an accurate date.

19 Q. Years, years and years?

20 A. Yes, it's been years.

21 Q. Okay. And you know his family?

22 A. Yes.

23 Q. And you know his mother?

24 A. Yes.

25 Q. Okay. Do you know his father as well?

1 A. No.

2 Q. Okay. You know his siblings, his sister?

3 A. Yes.

4 Q. Okay. And you know them from going to the Native American
5 Church; correct?

6 A. I know them. It's a small community.

7 Q. Sure.

8 A. His -- I believe his aunt is married to my uncle, and
9 they've been married for quite some time so we knew each other
10 from -- from that too.

11 Q. Okay. And so you're Native American?

12 A. Yes.

13 Q. You're Winnebago?

14 A. Yes.

15 Q. Okay. And as you said earlier, you -- it's a small
16 community so --

17 A. Yes.

18 Q. And you also knew Jonathan to work for the city at that
19 time; correct?

20 A. No. I did not know where he worked.

21 Q. Okay. When you talked to him after you gave him his
22 rights and he agreed to speak with you, he referenced to you
23 people and occasions of seeing them at church; correct?

24 A. Yes.

25 Q. Okay. And that basically is a history that the two of you

1 have about common people in the community; correct?

2 A. Yes.

3 Q. All right. So when you said to him -- when he told you,
4 "I already talked to that guy," and you said he's FBI, I'm BIA,
5 so what does that statement mean?

6 A. As a BIA officer, we conduct our own primary investigation
7 for tribal court.

8 Q. Okay.

9 A. So it's separate from FBI Agent Roberts' investigation.

10 Q. Well, you certainly know if there is a body, whether it be
11 a homicide or whether it be an unlawful disposal of a body,
12 that that's a FBI matter; correct?

13 A. Yes. It would -- also would be my jurisdiction under
14 tribal law.

15 Q. Did you prosecute this under jurisdiction of tribal law?

16 A. Yes. I submitted everything to tribal court.

17 Q. And it's been dismissed?

18 A. I wasn't -- I didn't know that.

19 Q. Okay. Did you honestly think it was going to be
20 prosecuted by Winnebago Tribal Court --

21 A. I don't --

22 Q. -- when you have a body on your hands?

23 A. I don't know that.

24 Q. You have no idea?

25 A. No.

1 Q. Have you ever seen it happen?

2 A. No, not in -- not in Winnebago.

3 Q. Where at have you seen it happen?

4 A. I've been detailed to 12 other different reservations, a
5 total of five different states in Indian country, and I've seen
6 that happen before.

7 Q. Okay. Which case is that?

8 A. We had a -- a similar case, a homicide in Standing Rock
9 Indian Reservation where a female murdered her spouse, and
10 that's where it happened.

11 Q. It happened under tribal jurisdiction?

12 A. Yes.

13 Q. And it was prosecuted by the tribe instead of by the FBI?

14 A. It was both.

15 Q. It was prosecuted in both jurisdictions?

16 A. Yes.

17 Q. Okay. So in your -- in your mind you thought, you know,
18 that this statement that you were taking from him would be used
19 against him in tribal court; correct?

20 A. Yes.

21 Q. And that that was independent and regardless of whatever
22 he decided to do to end the conversation with the FBI?

23 A. Yes.

24 Q. All right. So even if you knew that he wanted a lawyer
25 for his federal statement, that to you didn't necessarily mean

1 he wanted a lawyer for his tribal statement; correct?

2 A. I don't understand your question.

3 Q. Okay. Let me just rephrase it a little bit. So in your
4 mind they're separate statements to be used by separate
5 prosecuting entities; correct?

6 A. I believe so, yeah.

7 Q. Okay. So you said that your statement is for the -- the
8 tribal prosecution; right?

9 A. Yes.

10 Q. Okay. So in your opinion the statement that you took from
11 Mr. Rooney was independent of whatever statement he made to the
12 FBI; right?

13 A. Yes.

14 Q. Okay. So also, regardless of however that statement went,
15 whatever reason he had that he was done talking to Roberts, you
16 were going to take a statement if he was willing to talk to you
17 to be used in tribal court?

18 A. Yes.

19 MS. STEENBOCK: Nothing further.

20 THE COURT: Redirect.

21 MS. WRIGHT: I have nothing further, Your Honor.

22 THE COURT: Ms. Wright, is there any reason that this
23 witness cannot be excused?

24 MS. WRIGHT: No, Your Honor.

25 MS. STEENBOCK: No, Your Honor.

1 THE COURT: Okay. Thank you, Ms. Steenbock.

2 Sir, thank you for your testimony. You may stand down.

3 THE WITNESS: Thank you.

4 THE COURT: Ms. Wright, do you have additional
5 evidence?

6 MS. WRIGHT: I do not, Your Honor.

7 THE COURT: Do you rest?

8 MS. WRIGHT: I do.

9 THE COURT: Evidence on behalf of the defendant.

10 MS. STEENBOCK: No, Your Honor. We rest.

11 THE COURT: Thank you. When we had started --

12 MS. WRIGHT: Thank you.

13 THE COURT: -- on Tuesday, I had indicated that I
14 would give the parties an opportunity to make closing
15 arguments. I think I -- so this is your opportunity to do so.

16 I think I'll let Ms. Steenbock go first with your argument
17 and give Ms. Wright an opportunity to respond.

18 MS. STEENBOCK: Thank you, Judge.

19 I first want to address this mootness dispute that we're
20 having. I will tell the Court that I did some research on
21 that. From my research there are no appellate decisions
22 requiring the court to accept the government's request that you
23 find it to be moot because they're not going to use the
24 statement.

25 What I did find is two district court orders from Iowa

1 upholding a magistrate's concession that the government -- or a
2 finding of mootness because the government displayed a manifest
3 intent to not use the statement.

4 I would ask the Court to consider that although that
5 district court judge may have found that that is fine in that
6 circumstance that that is certainly not something you are
7 required to accept. There is no rule, no law precedent that
8 says that the government gets to dictate what this court
9 decides based on the defendant's motion.

10 And I would submit to you that the reason and the
11 motivation for that is to avoid a finding of unconstitutional
12 behavior by this FBI agent and by this BIA agent. The whole
13 purpose of *Wong Sun*'s exclusionary rule is to deter future
14 police misconduct by not allowing them to use statements
15 obtained in violation of Miranda or in other situations that
16 are unconstitutional.

17 So what they're asking you to do is skirt a finding that
18 what they did was wrong in this case, which it is wrong, and
19 it -- it may present itself as relevant in the future. Even if
20 the government doesn't intend to use it in their case in chief,
21 it may be relevant.

22 I will tell the Court in candor there are going to be
23 other issues that may touch on these statements, including but
24 not limited to, you know, 404(b) bad acts evidence. The
25 government will likely seek to introduce prior bad acts, and

1 some of the statements that the defendant gave that are
2 incriminatory that were taken in violation of his rights may
3 touch on the believability or credibility of those statements.
4 And if there is a court ruling that they were taken in
5 violation of his rights, then that's a different ground that we
6 can deal with when we go to the motion in limine hearings.

7 There's also things that I can't necessarily foresee right
8 now. For instance, there are guideline enhancements. There
9 are clemency issues in the event that Mr. Rooney is convicted.
10 There's a number of reasons, and I would ask the Court to make
11 findings independent of the government's intent at this point
12 to use those statements.

13 I don't think that there -- there's any need for me to
14 spend a lot of time on statement one. It is indisputably taken
15 without Miranda.

16 Statement number two, which is the statement Roberts
17 achieved when he first arrived at the scene, he testified on
18 Tuesday that his intent was to ascertain Mr. Rooney's level of
19 intoxication and to determine whether or not his body had
20 physical evidence that needed to be preserved. He may say that
21 that's his intent, but there is not one thing in the record or
22 really in anyone else's testimony to support that. He's saying
23 that now as a way to fit within the confines of the *Siebert*
24 ruling.

25 In other words, he wants this Court to think his

1 intents -- intention was not malfeasance but his -- his
2 mind-set was innocent. The Court has a copy of the audio
3 recording, and right from the jump he doesn't ask him, "Are you
4 drunk? Have you been using drugs? Are you high?" He says,
5 "Why are you in here?" And after a few moments after that, he
6 says, "Do you guys fight a lot? I mean, what's going on?"

7 Even after Mr. Rooney tells him at 3:56, "I didn't think I
8 was in any trouble," he -- he tries to minimize that, saying,
9 "No, I'm not saying you are in trouble," even though he clearly
10 is handcuffed naked in the back of a cruiser, and then ac- --
11 tries again to get into this situation with prior domestic
12 acts.

13 The second conversation uses that tenor, uses that
14 information for Roberts to develop a fake persona where he's
15 the victim of a domestic relationship, and he gets it, man.
16 That's how bitches be. They corner you, they trap you, they
17 make you feel like you have to do something back to them.
18 That's all ridiculousness, and it is based entirely on what he
19 achieved from the first statement.

20 When he went in the second time, he did not make any
21 effort to say, "Look, I talked to you before. None of that is
22 going to be used against you. I want to start fresh." He did
23 not try and do that. He did not -- even if his intent, which I
24 don't believe, was intent to find out the level of intoxication
25 and find out injuries, he did not, once he got into the weeds,

1 so to speak, stop and say, "Hey, I think we're going too far.
2 I need to tell you what your rights are." He did not do that.

3 Siebert talks about a five -- five factors for this Court
4 to consider when determining whether or not this was a
5 conscious decision to withhold Miranda. Number one, the
6 completeness and detail of questions and answers to the first
7 round of questioning. I just talked about how the domestic is
8 a common theme with both.

9 Number two, whether or not the two statements have
10 overlapping content -- content.

11 Number three, the timing. The entire time Mr. Rooney was
12 naked and handcuffed in the back of a cruiser. There is no
13 intervening circumstance. There is no event that -- that broke
14 the causal chain between this conduct.

15 Number four, the continuity of police personnel.

16 And number five, the degree to which the interrogation
17 treated the second round of questioning as continuous with the
18 first round of questioning. He made no attempt to advise that
19 the prior statement, couldn't use. He took no effort to take
20 curative measures.

21 He may not have known that he needed to provide Miranda.
22 It seems as though this officer is not experienced at all. His
23 testimony was that he didn't realize he had audio recorded the
24 first statement because he thought it was an interrogation that
25 he had done during a transportation. I -- I asked him with

1 kind of incredulity, you know, you know that that's also a
2 custodial interrogation, and he said no, he didn't know that.

3 So it may be that he didn't realize that was his
4 obligation, but that doesn't mean that he didn't have that
5 obligation under the law. He testified that he was taught at
6 Quantico that anytime somebody's in custody that you're
7 supposed to give them their rights per Miranda, and he failed
8 to do so. So he was either trained to do it this way or he
9 decided to do it this way for other strategic reasons that he's
10 not being honest about.

11 So after I filed the motion to suppress and I called him
12 out for not only not recording it, which seems silly, but then
13 not even writing a 302 -- there's no report even with a
14 mention. The only reason I knew that this first report existed
15 or this first conversation existed is because Walker and
16 Trudell put it in their reports that it happened. Otherwise,
17 if you look at the totality of the FBI investigation and the
18 reports, there is no mention of it at all.

19 *Siebert* asks the court whether a reasonable person in
20 Mr. Rooney's shoes would have understood the second Miranda to
21 have given him any real choice, and I would submit to you
22 because of all that had occurred beforehand, there is no belief
23 that Mr. Rooney had at that point that he had a real choice
24 about continuing the conversation that they had already had
25 about his relationship with Ms. -- Ms. Decorah and their prior

1 domestic incidents that were brought up in the first incident.

2 I would urge the Court to not only suppress statement
3 number two, but to suppress statement number three as a
4 unlawful continuation of the conduct in statement number two.

5 As to statement number four, the last series of questions
6 illustrate I think the whole point is that whether or not the
7 BIA agent knew whatever reason Mr. Rooney had to terminate his
8 conversation with the FBI, that they thought they had the right
9 to go in, give him a new Miranda, and to see if he wanted to
10 speak. And that, of course, is completely contrary to *Edwards*
11 and *Minnick*. It does-- and I would submit it doesn't even
12 matter if he knew or not, but he at least had some indication
13 that Mr. Rooney had terminated the conversation.

14 He knew that it had been a 30-minute conversation. He
15 made no inquiries why. He says he made no inquiries of Roberts
16 why. I mean, that -- there's -- the case law is pretty --
17 pretty straightforward that it's a bright-line rule unless
18 Mr. Rooney initiates further conversations after having invoked
19 his right to have counsel that those statements should not be
20 taken.

21 The -- the second prong is we are also arguing that it
22 should not be used against Mr. Rooney as impeachment evidence
23 should he elect to testify. The Court has heard numerous times
24 that Mr. Rooney was naked. He was in the back of a police car.
25 The ambulance was taken -- or brought to evaluate the child

1 because the child had been exposed to weather and it was cold.
2 Mr. Rooney was not evaluated. He was not offered clothes. He
3 was not offered anything more to conceal his privacy, you know.

4 The fact that I mentioned that Officer Walker knows
5 Mr. Rooney from the community, offered a little bit of us
6 versus them as far as we're BIA, we're Native Americans, you
7 know, this is the FBI, this is completely different, don't
8 worry about that, is a little bit of coercive. It is a little
9 bit of relying upon a common community, and we would argue that
10 all of this combined should render the statement given not only
11 in violation of *Minnick* and *Edwards* but also involuntarily
12 given.

13 And with that I'll submit the matter.

14 THE COURT: Thank you.

15 Ms. Wright, in your argument why don't you start with
16 identifying for the Court what statements the government
17 intends to offer and for what purpose, whether it be for trial
18 or for under 404(b) or potential other uses and also whether it
19 might be offered for impeachment or not in the event the
20 defendant testifies. There are four statements essentially,
21 "statements" meaning periods in which the defendant was
22 questioned. One and four were done by Officer Walker. Two and
23 three were done by Special Agent Roberts.

24 So again, I know we went over this a little bit when we
25 started the -- the hearing on -- on Tuesday, but on those four

1 sets of statements, how does the government intend to use those
2 in this case?

3 MS. WRIGHT: So the first interview with Officer
4 Walker, the government would not be using that in its case in
5 chief. That -- that interview, quite frankly, I don't know
6 that we have any interrogation that took place. The defense
7 does not seem to be arguing that that is an improper statement.
8 I think our focus here is -- is on that -- is from when Agent
9 Roberts made contact with Mr. Rooney. So that first interview,
10 if we're going to call it an interview, between Officer Walker
11 and Mr. Rooney, the government -- I don't plan on using any of
12 those statements, but I also don't think that there's been any
13 presentation or argument here that there was a -- a violation.

14 THE COURT: Well, the testimony was, as I understand
15 it, that Mr. Rooney denied knowing where the victim was.

16 MS. WRIGHT: Correct. That is correct. And so that
17 would be potential impeachment evidence only, Your Honor.

18 For the second statement, which is the one when Agent
19 Roberts made contact with Mr. Rooney at approximately 3:23, the
20 government already indicated we are not going to use those
21 statements in our case in chief, but we do believe they are
22 available for impeachment purposes.

23 The third statement, it's the government's position that
24 that comes in and is admissible using the framework of *Oregon*
25 *vs. Elstad*.

1 The fourth statement, which is the one with Officer
2 Walker, the government does not plan to use that in its case in
3 chief, but it's our position it is available for impeachment
4 purposes.

5 THE COURT: What about Ms. Steenbock's argument
6 that -- that while you may not be intending to use the
7 statements in the questioning one, two and four in your case in
8 chief, she's concerned it might be used for other purposes?

9 MS. WRIGHT: Well, unfortunately we haven't really
10 dis- -- had an opportunity to flesh out those issues, but if it
11 was for 404(b), for example, I think that we would have to have
12 motions in limine to determine whether or not at the time that
13 evidence may come forward if it is admissible or not. I think
14 it's too soon, without us having an evidentiary hearing, to
15 make a determination about any 404(b) evidence, which in this
16 case it would only be from that first interview where Agent
17 Roberts -- sorry. I should say the second interview where
18 Agent Roberts briefly spoke to the defendant for the six
19 minutes.

20 As far as the 404(b) analysis, I would ask the -- the
21 Court not make a ruling on that, 'cause we really haven't had
22 an opportunity to address that issue. I think that's properly
23 addressed with a motion in limine and that it would still be
24 potentially admissible for those purposes and of course with a
25 limiting instruction. So I'm not willing at this point to say

1 that we're not potentially going to use that.

2 THE COURT: Do you want to address the issue of
3 whether, if statements are not going to be admissible,
4 nonetheless they can be used for impeachment purposes?

5 MS. WRIGHT: Yes, I do. So the violations have to be
6 of a nature that essentially you're going to punish the -- the
7 government for these violations, and I just don't think you
8 have that here. The law is pretty straightforward at -- my
9 brief addresses this -- that's still available for impeachment
10 purposes even under more egregious circumstances than what we
11 have here, which is -- quite frankly, there's no egregiousness.
12 They are still admissible for impeachment purposes.

13 I don't think Your Honor has seen anything during the
14 course of this hearing, any of the testimony, any of the
15 recordings, that would suggest that those items should be
16 suppressed and not used for impeachment; so the government's
17 position is that they are available for that purpose.

18 THE COURT: And then there's the issue raised with
19 regard to the third interview/interrogation session with --
20 which took place after the government asserts and Special Agent
21 Roberts testified that Miranda warnings were given to the
22 defendant.

23 MS. WRIGHT: So that particular interview, Your
24 Honor, is admissible, and that's why I -- I would like to -- I
25 guess I'll just make a closing argument, if I --

1 THE COURT: Sure.

2 MS. WRIGHT: -- if I may. So first I'll address the
3 moot issue. In this court historically in practice the issue
4 is moot because the government is not presenting any evidence
5 for which we're -- we're planning on needing a ruling. We
6 don't need a ruling on it because we're not going to be using
7 it. That is what renders the issue moot, and so it's not
8 skirting a constitutional issue and avoiding a finding being
9 made that's adverse.

10 We're -- there is no evidence that we're asking to use,
11 and, therefore, there's no ruling that needs to be made on it.
12 So it's the government's position that the historical nature
13 and practice in these courts should remain and that it just be
14 denied as being a moot issue.

15 Now, I have indicated that *Oregon vs. Elstad* is the proper
16 framework here, and that is because in order for this to be
17 analyzed under *Missouri vs. Siebert*, there has to be some sort
18 of intentional designed plan to violate Miranda, and you just
19 don't have evidence of that here. Without being offensive to
20 Agent Roberts or Officer Walker, it does not seem that their
21 understanding of how Miranda works is sophisticated enough that
22 they formed a plan to say, "I'm going to go in here and make
23 some headway with Mr. Rooney as much as possible, not advise
24 him of his rights, get him to confess, and then we'll clean it
25 up later and get him to confess again."

1 Instead what happened is when Officer Walker made his
2 initial contact with Mr. Rooney, he let him know he was being
3 detained as Ms. Decorah had not been located yet, and he's
4 still very actively searching for Ms. Decorah. Although there
5 was some suspicion with regard to the remains, the fact that
6 Officer Walker was asking the Nebraska State Patrol helicopter
7 to go up and look for her, that they made contact with Thurston
8 County to attempt to locate her via her cell phone supports
9 that they're all still looking for her actively.

10 You'll see that when Mr. Rooney is found, it's at
11 midnight, and then the conservation officers say we're -- we
12 found the male, we found the infant, we're still looking for
13 Ms. Decorah. They continue searching for her, and it's over
14 an -- it's about an hour before they say, "We're going to bring
15 Mr. Rooney back to the police station. We're still up here.
16 There appears to be a skull in -- in this fire." But there was
17 no confirmation at that point. And so you have a situation
18 where, once Mr. Rooney's brought down, things are looking a
19 little suspicious, but they had no confirmation and were still
20 very much actively looking and hoping to find Ms. Decorah.

21 And their brief conversation where Officer Walker lets the
22 defendant know, "You're going to be held," and then that's over
23 and done with, Agent Roberts arrives and has some knowledge.
24 He's still suspicious himself as to whether or not this is
25 truly a human skull, and he even asked on the phone when he was

1 notified you've got to get some confirmation. Once he had a
2 telephonic confirmation, he still wanted to see for himself to
3 know whether or not these remains were human remains.

4 Now, the conversation that he had with Mr. Rooney
5 initially, he said that he wanted to observe him and make sure
6 he wasn't going to be taken to Thurston County and any
7 potential evidence destroyed. There's no obligation for Agent
8 Roberts to approach Mr. Rooney and tell him, "This is why I'm
9 talking to you. I'm trying to make sure I preserve this
10 evidence." And so the nature of the conversation that he had
11 with Mr. Rooney is fine. It could be his true intent to make
12 an observation of him, but he also can ask questions that don't
13 reveal what his intent was, whether it be to see if he were --
14 he was under the influence or -- of something.

15 Now, although Agent Roberts testified it wasn't his intent
16 to interrogate him, we've already acknowledged and conceded
17 that the questions certainly cross into interrogation and he
18 should have been advised of his rights, and so there -- but you
19 can tell from the way this progressed that there was not a
20 purposeful, planned intent to go in there and try to get him to
21 say as much as possible, to confess to something. He was kind
22 of sussing out and feeling out what -- what was going on with
23 the defendant.

24 Once he gets up to the scene and is satisfied that there
25 is a human skull and Ms. Decorah has still not been located, he

1 decides that this truly is a suspect and he's going to
2 interrogate him, and so he was advised of his rights. His
3 failure to advise the rights at the first interview at 3:23,
4 though, does not forever bar a subsequent interview, and that's
5 where *Oregon vs. Elstad*'s framework is so important, because
6 you're looking at the voluntariness, and you look to the first
7 interview to look at the voluntariness. There were no coercive
8 tactics used.

9 These conversations which you have listened to are calm.
10 They're respectful. There's no -- there's no level of coercion
11 used whatsoever. Everything was voluntary. All the
12 discussions were voluntary. This notion that the first
13 interview in which they talk about domestic violence is now so
14 linked to the second one. I just don't think Your Honor should
15 buy that. The way the second interview went down could have
16 gone that way regardless of whether or not Agent Roberts asked
17 in the first interview if there was any domestic violence
18 between the two.

19 There was one reference to it in that first interview, and
20 in the second interview after Agent Roberts had observed the
21 scene, there's -- at that point he's just interrogating him,
22 and he had advised him of his rights, which the defendant
23 waived. And further he felt comfortable enough at some point
24 to know, okay, I'm done talking. I want a lawyer.

25 So this idea that Mr. Rooney the -- thought he had no --

1 no choice but to just roll with it, he had already let the cat
2 out of the bag, that's just not true, because what Mr. Rooney
3 in fact did was say he didn't know where Ms. Decorah was, that
4 she had walked off. He hadn't let any cat out of any bag.

5 Then with respect to the last interview, I've already
6 addressed that. I think that Your Honor understands my
7 position on that one. That's the one with Mr. -- Officer
8 Walker.

9 Based on everything, looking at the totality of the
10 circumstances, which is what you have to do to make a
11 determination of whether this is a *Missouri vs. Siebert* issue
12 or an *Oregon vs. Elstad* issue, it becomes apparent that it is
13 an *Oregon vs. Elstad* issue, and I note in my brief that there
14 are cases where the violations are much more egregious,
15 involving physical coercion. Here you just don't have those
16 facts.

17 Even the suggestion of a shared culture, that they're both
18 Native American and that's the reason that we should now not be
19 able to use the interview for impeachment purposes with Officer
20 Walker, it's just human nature to try to make some sort of bond
21 with a person in speaking with them. That is not coercion.

22 So for the reasons stated in our brief, for the reasons
23 brought during the course of this hearing, we would ask that
24 the motion be denied.

25 THE COURT: Thank you. I appreciate the parties'

1 arguments.

2 Ms. Steenbock, did you have any additional comments,
3 briefly?

4 MS. STEENBOCK: Just briefly, Judge. I think when
5 you're looking to whether or not Officer Roberts is just
6 inexperienced and -- and mistakenly did this by not Mirandizing
7 the first time, I think that's my whole point with looking at
8 all the other things he did. He hid a recording. He didn't
9 make a report. He lied about his intention when he observed
10 the defendant.

11 And then even if you would give him the benefit initially,
12 it is very clear that he crossed the line and made absolutely
13 no effort to cure his mistake, either in the first instance or
14 when he went back and he said -- you know, when he gave him his
15 rights, he made no effort, as is required by *Siebert*, to try
16 and make sure the defendant had an actual choice. It's an easy
17 thing to say, "I know you talked to me before, but I'm going to
18 talk to you again, and this time I need to make sure you
19 understand your rights."

20 That would have been a completely different scenario, and
21 that's not what happened, because maybe he thought that he
22 wouldn't ever have to reveal the first statement. He wouldn't
23 have gotten caught concealing a recording or -- I find it
24 unbelievable that over the course of May, when this occurred,
25 and October, when I filed my motion, that he didn't have time

1 to write a 302 even to document it. It was because of him
2 knowing that he messed up and that it affects the entirety of
3 the investigation.

4 I don't have anything else to add.

5 THE COURT: Thank you. I'll deem the matter
6 submitted after the transcript, which I'm ordering, is prepared
7 and is filed and available to the parties on CM/ECF. After
8 it's submitted, it is my practice to try to get findings and a
9 recommendation out within 30 days, and I intend to do so in
10 this case.

11 Defendant has been in custody under an order of detention
12 and will be remanded back to the custody of the U.S. Marshal.

13 Are there further matters that can be addressed on behalf
14 of the defendant today?

15 MS. STEENBOCK: No, thank you.

16 THE COURT: On behalf of the government.

17 MS. WRIGHT: No, Your Honor. Thank you.

18 THE COURT: We're in recess. Parties are excused.

19 (Adjourned at 11:56 a.m.)

20 * * * * *

21 I, Lisa G. Grimminger, certify that the foregoing is a
22 correct transcription to the best of my ability from the
23 digital recording of the proceedings held in the above-entitled
24 matter.

25 /s/Lisa G. Grimminger January 13, 2021
Lisa G. Grimminger, RDR, CRR, CRC Date

I-N-D-E-X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
<u>WITNESSES:</u>			
<u>FOR THE PLAINTIFF:</u>			
Samuel Roberts	10	32	46
Anthony Walker	52	77	--
<u>EXHIBITS:</u>			
		<u>Offered</u>	<u>Ruled On</u>
1. CD of officer interviews		5	5
2. Exhibit 1		5	5
3. Exhibit 1		5	5
4. Advice of rights		5	5